BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

(WESTERN ZONE BENCH), PUNE

EXECUTION APPLICATION NO. _____ OF 2023 [WZ]

(UNDER SECTION 25 OF THE NGT ACT, 2010)

IN

ORIGINAL APPLICATION NO. 21 (THC) OF 2013 [WZ]

IN THE MATTER OF:

The Goa Foundation ...Applicant

Vs

State of Goa and Ors. ...Respondents

NOTARY
Mapusa Bardez - Goa
Regd. No. 218/10
Expiry Date
29/01/2025
OF GOA (INDIA)

Compilation – I

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PLACE – MAPUSA, GOA

DATE – 27.10.2023

27.10.2023

Advocate for the Applicant

BEFORE THE HONBLE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE BENCH) PUNE

EXECUTION APPLICATION NO. _____ OF 2023 [WZ]

(*UNDER SECTION 25 OF THE NGT ACT, 2010*)

IN

ORIGINAL APPLICATION NO. 21 (THC) OF 2013 [WZ]

IN THE MATTER OF:

The Goa Foundation …Execution Applicant

in

Manual F. Rodrigues …Applicant

Vs

State of Goa and Ors. …Respondents

SYNOPSIS AND LIST OF DATES AND EVENTS

O.A. No. 21 (THC)/2013 (WZ) was filed by one Mr. Manual F. Rodrigues, resident of Velsao, to demolish the illegal construction of a hotel carried out by one Kyle San Holidays Pvt. Ltd. (Respondent no.8) in Survey No. 54/3 of Village Panchayat of Velsao. Initially, the Original Applicant had approached the Hon'ble High Court of Bombay at Goa with this issue in the form of W.P. 98 of 2009, but in 2013, the matter was transferred for adjudication to this Hon'ble Tribunal in view of directions of the Hon'ble Apex Court. After hearing of the Application, this Hon'ble Tribunal was pleased *vide* a judgement dt. 19.03.2014 to direct that the standing structure of Kyle-San Holidays Pvt Ltd [*Resp. No.* 8] be demolished / dismantled within the period of

3 weeks and to remove all the debris, filth from the site at his own cost. If this was not done by the R. 8 , the same was to be demolished by the Collector, South Goa (*Resp. No. 4*). In addition, The Respondent No. 8 was directed to pay costs of Rs. 20 lakhs as litigation costs to be deposited with the Goa Legal Services Authority to be used for needy litigants. Pursuant to the judgement dt. 19.03.2014, the Respondent No. 8 filed an Appeal in the Supreme Court of India under Civil Appeal No. 4007 of 2014.The Hon'ble Supreme Court dismissed the Appeal by its order dated 27.09.2022, and directed the Resp. No. 8 to comply with the directions contained in the judgement dated 19.03.2014 (*including demolition of the structures*) within a period of 8 weeks from the date of the order, i.e. 27.09.2022. However, the Hon'ble Supreme Court waived the direction wherein costs of Rs. 20 lakhs were to be paid by the Resp No 8 to the Goa Legal Services Authority. After the period of 8 weeks from the order of the Supreme Court had elapsed and there was no action of demolition of the structure by the Respondent No. 8, the Applicant wrote a letter dated 08.12.2022 to the Collector, South Goa, (Respondent no. 4), drawing to his attention that the orders passed by the NGT and subsequently upheld by the Supreme Court with respect to demolition of the structure had not been complied with. Hence, the Collector was required to carry out the directions and report compliance to the court. Within a month, the Collector, South replied to the Applicant vide a letter dt. 23.12.2022, informing the Applicant that, the Collector on 30.11.2022 had already asked the Deputy Collector & SDO, Mormugao, to submit a compliance report in the matter as to whether the impugned structures was demolished or not, and a report of the same was awaited, and that a fresh request dt. 23.12.2022 was made by the Collector to the Deputy Collector & SDO, Mormugao, to submit a detailed report within 24 hrs of the letter being received for further necessary action to be taken. However, no further response was received by the Applicant thereafter. Worse still, the said structure has not been demolished by the Respondent no. 8 or by the Respondent no. 4 till date, and stands as a huge blemish in the coastal area of Village Velsao, violating the Coastal Regulation Zone Notification, in addition to the orders of the Hon'ble Supreme Court and the orders of the Hon'ble NGT. The Applicant submits that the direction regarding

demolition of the structure has not been carried out either by the Resp No. 8 or by the Collector South Goa (Resp No 4.) Hence, the present Application is being filed for execution of the directions of this Tribunal in its judgement dt. 19.03.2014 to demolish/dismantle the Hotel Structures, which have been upheld by the order of the Hon'ble Supreme Court dt. 27.09.2022. Hence this EA.

CHRONOLOGY OF DATES AND EVENTS

Sr. No.	Date	Particulars of events or documents if any	Annexure and Page
1.	2009	Original Application i.e. Manual F. Rodrigues files Writ Petition 98/2009 in Hon'ble High Court of Bombay at Goa regarding certain constructions on Survey No. 54/3 of Velsao village, South Goa.	
2.	30.06.2009	Present Applicant, i.e. The Goa Foundation, allowed by Hon'ble High Court to intervene in W.P. 98/2009. Order records that the intervenor would be heard at the time of final hearing.	**Ann. 2 Colly**, at pg. 54
3.	17.10.2013	Hon'ble Bombay High Court transfers W.P. 98/2009 to the Hon'ble N.G.T. [WZ] Bench, where the matter is renumbered as O.A. 21[THC]/2013. Present Applicant not made a party to this O.A., despite being a party to the HC Petition.	**Ann. 2 Colly**, at pg. 55
4.	2014	Original Applicant files M.A. No. 17/2014 seeking withdrawal of the O.A. 21[THC]/ 2013.	
5.	19.03.2014	Hon'ble N.G.T. allows Application. *Inter alia*, directs Resp. No. 8 to demolish structures constructed on the suit property within 3 weeks, and restore the site within 2 weeks thereafter. Costs imposed on the R. 8 as well.	**Ann. 1** , at pgs. 15 - 53

6.	24.03.2014	Private Resp. No. 8 prefers Civil Appeal before the Hon'ble Supreme Court of India, against the judgement dt. 19.03.2014.	
7.	07.11.2014	Present Applicant files I.A. 3/2014 for impleadment in Civil Appeal filed by Resp. No. 8	**Ann. 2 Colly**, at pgs. 56 - 65
8.	09.02.2015	Hon'ble S.C. tags Applicant's I.A. 3/2014 along with the main matter	**Ann. 2 Colly**, at pg. 66
9.	05.12.2017	Order of the Hon'ble S.C. in the Civil Appeal records presence of counsel for the Respondent 'Goa Foundation', i.e. the Present Applicant	**Ann. 2 Colly**, at pg. 70
10.	27.09.2022	Hon'ble Supreme Court dismisses the Civil Appeal filed by the Resp. No. 8, directs the R. 8 to comply with the directions including demolition of the constructed structures within 8 weeks. However, portion of certain costs imposed on the R. 8 waived by the S.C.	**Ann. 2 Colly**, at pgs. 72 – 75
11.	08.12.2022	Goa Foundation (*Applicant*) writes to the Collector of South Goa (Resp No. 4) drawing to their attention the order passed by the Hon'ble Tribunal which was upheld by the Supreme Court, and the fact demolition of the illegal structure of Respondent no. 8 had not been carried out within 8 weeks as directed by the S.C.	**Ann. 3**, at pgs. 76 – 77
12.	23.12.2022	The Collector of South Goa vide letter dated 23.12.2022 informs the Applicant that the collector on 30.11.2022 had asked the deputy Collector & SDO Mormugao to submit a compliance report in the matter as to demolition of the illegal structure	**Ann. 4**, at pgs. 78 - 79
13.	27.10.2023	No further action taken by authorities to demolish offending structures on Survey No. 54/3 of Velsao village, South Goa. Hence, Present Execution Application is filed.	

PLACE : MAPUSA, GOA

DATE : 27.10.2023

27.10.2023

ADVOCATE FOR THE APPLICANT

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE BENCH), PUNE

NOTARY
Janardhan S. Parsheka,
Mapusa Bardez - Goa
Regd. No. 218/10
Expiry Date
29/01/2025
GOVT. OF GOA (INDIA)

EXECUTION APPLICATION NO. _____ OF 2023 [WZ]

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IN

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IN THE MATTER OF:

The Goa Foundation …Execution Applicant

in

Manual F. Rodrigues …Applicant

Vs

State of Goa and Ors. …Respondents

ADVOCATE FOR THE APPLICANT:

27.10.2023

Adv. Leona Barreto,
MAH/2983/2018,
CF Alvarez House, Old Market,
Margao, Goa - 403601,
Email - advleonabarreto@gmail.com,
Phone - 7507192037 .

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE BENCH), PUNE

EXECUTION APPLICATION NO. _____ OF 2023 [WZ]

(UNDER SECTION 25 OF THE NGT ACT, 2010)

IN

ORIGINAL APPLICATION NO. 21 (THC) OF 2013 [WZ]

1. **THE GOA FOUNDATION,**
through its Secretary, Dr. Claude Alvares,
age 75 years, Having Regd. Office at
G-8, Brittos Apartment, Feira Alta
Mapusa Goa - 403507,
Contact No. – 7507192037, 8007558624,
Email id: goafoundation@gmail.com.

...APPLICANT

AND

1. **The State of Goa,**
Through its Chief Secretary,
Having office at Secretariat,
Porvorim, Goa - 403521,
Email id: cs-goa@nic.in,
Contact No. - 0832-2419402.

2. **The Goa Coastal Zone Management Authority,**
through its Member Secretary,
4th Floor, Dempo Towers Bldg.,
Patto Plaza, Panaji, Goa – 403001,
Email id: goacoastalzone@gmail.com,
Contact No. - 0832-2407186.

3. **The Ministry of Environment, Forest & Climate Change**, through its Secretary,
Indira Paryavaran Bhavan,
Jor Bagh Rd, New Delhi - 110003,
Email id – mefcc@gov.in,
Contact no. – 011 - 24645586.

4. **The District Collector [South Goa],**
Matanhy Saldanha Administrative Complex,
Near KTC Bus Stand, Margao,
South Goa District, Goa, India – 403601,
Email id: cols.goa@gov.in,
Contact No. - 0832-2794810.

5. **The Mamlatdar of Mormugao Taluka,**
Mormugao,Vasco da-gama, Goa – 403802,
Email id - mam-mormugao.goa@nic.in,
Contact No. - 0832-2513014.

6. **The Town and Country Planning Dept.,**
thr. the Chief Town Planner (Planning),
2nd Floor, Dempo Towers,
Patto, Panaji, Goa – 403001,
Email id – ctp-tcp.goa@nic.in,
Contact no. - 0832-2437352.

7. **The Village Panchayat of Velsao-Pale-Issorcim,** through its Sarpanch,
Velsao, PO Cansaulim, Goa – 403712,
Email id – panchayatvelsao@gmail.com,
Contact no. – 0832-2754066.

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usa Bardez - Goa
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8. **M/s. Kyle-San Holidays Pvt Ltd.,**
Through its Director,
302, 3rd Floor, Mathias Plaza,
18th June Road, Panaji,Goa,
Email id - suresh.parmar@saldanhagroup.com.

...RESPONDENTS

[Above are all registered addresses of the parties]

EXECUTION APPLICATION U/s S. 25 OF THE NATIONAL GREEN TRIBUNAL ACT, 2010 FOR EXECUTION OF THE JUDGEMENT DT. 19.03.2014

1. The address of the Applicant's counsel is given below for the service of notices of this Appeal.

2. The addresses of the Respondents are given above for the service of notices of this Appeal.

3. The Applicant is approaching this Hon'ble Tribunal in respect of execution of the directions issued by this Hon'ble Tribunal vide its judgment dated 19.03.2014 (*Mr. Manuel F. Rodrigues v/s State of Goa & Ors*). A copy of the judgment is enclosed at **Annexure 1**.

PARTICULARS OF APPLICANT

4. This Applicant is not shown as Applicant in the Cause title in the O.A. 21/2013. However, as the application will show, it has been involved in this matter from 2009 onwards, both in the Hon'ble High Court of Bombay at Goa and subsequently in the Hon'ble Supreme Court of India. It appears that inadvertently, when the High Court transferred the matter to the NGT, the original applicant, who expressed that he was no longer interested in the application, did not join this applicant in the proceedings in the Hon'ble NGT. The NGT disposed of the application in favour of the absentee original applicant. When the aggrieved respondent [*Resp. No. 8 herein*] preferred an appeal against the NGT judgement dt. 19.03.2014 [*Ann. 1*], this Applicant being interested in the matter, engaged counsel to defend the NGT judgment. The Hon'ble Supreme Court upheld the NGT judgment which is not implemented till date. Hence the applicant has filed this execution application. The detailed facts in this regard are set out below:

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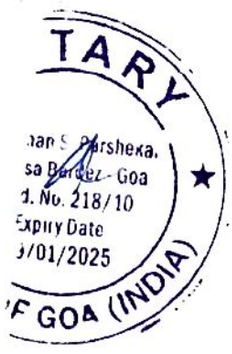
A) The O.A. was originally filed in the Hon'ble High Court of Bombay at Goa by Manual F. Rodrigues as Writ Petition 98/2009. Applicant herein had filed an Intervention Application in this W.P., which came to be allowed by the Hon'ble High Court vide its order dt. 30.06.2009. The order specifically recorded that the intervenor would be heard by the Court at the time of final hearing of the matter.

B) By an order dt. 17.10.2013, the Hon'ble High Court transferred the Writ Petition to the NGT [WZ] Bench, where the matter came to be numbered as O.A. 21[THC]/2013. This Applicant/intervenor was neither made a party to this O.A., nor was intimated about the matter being taken up for final hearing. For these reasons, the Goa Foundation, Applicant herein, was not a party before the NGT at the time of hearing and disposal of O.A. 21[THC]/2013.

C) The Original Applicant before the NGT, i.e., Mr. Manual F. Rodrigues in fact filed an M.A. No. 17/2014 seeking withdrawal of the O.A, which was rejected by the Hon'ble N.G.T. in its judgement dt 19.03.2014 as being the "outcome of a subsequent settlement which is extraneous to the substantial environmental dispute involved in the present matter."



D) When the private Respondent, i.e., R.8, filed a Civil Appeal in the Hon'ble Supreme Court against the NGT judgement dt. 19.03.2014, this Applicant filed an I.A. for impleadment in the S.C. matter bearing No. I.A. 3/2014, to represent the larger environmental issues in public interest, especially as the Original Applicant was no longer interested in contesting/continuing with the matter. This I.A. was directed to be placed along with the main matter *vide* an order dt. 09.02.2015, and in the S.C. order dt. 05.12.2017, the name of 'Goa Foundation' is reflected in the 'Respondents Column' of the S.C. order. This applicant had engaged Sr. Adv. Sanjay

Parikh, to defend the NGT judgment and to rebut the submissions of the private respondent when the matter was considered by the Hon'ble Supreme Court of India. The senior counsel's name is reflected in the order of the Hon'ble Supreme Court dated 27.09.2022. The relevant orders/documents reflecting the role of the Applicant in the Hon'ble High Court [*orders dt. 30.06.2009 and 17.10.2013*] and the Hon'ble Supreme Court [*I.A. dt. 07.11.2014; S.C. order dt. 09.02.2015; S.C. Office Report dt. 25.07.2017; and S.C. orders dt. 05.12.2017; and 27.09.2022*] are enclosed as **Annexure 2 Colly.**

5. For all these reasons, it is submitted that the Applicant herein (Goa Foundation) has been involved with this matter since the time the Writ Petition was filed in the High Court of Bombay at Goa in 2009. As the original petitioner is not interested in the matter and the NGT's order which has been upheld by the Hon'ble Supreme Court is not being implemented, the Applicant has therefore filed this Application for implementation of the judgement dt. 19.03.2014 in O.A. 21(THC)/2013, which was upheld by the Hon'ble Apex Court.

6. The Applicant requests this Hon'ble Tribunal to allow the Applicant to seek implementation of the NGT order dated 19.03.2014, which has become implementable only since 27.09.2022, after the Hon'ble Supreme Court dismissed the Appeal filed by the Respondent Company [*Resp. No. 8*].

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7. **PARTICULARS OF RESPONDENTS**

The Respondent No. 1 is the State of Goa. The Respondent No. 2 is the Goa Coastal Zone Management Authority. The Respondent no. 3 is the Central Ministry of Environment. The Respondent No 4 is the Collector of South Goa District. The Resp. No. 5 is the Mamlatdar of Mormugao Taluka, Goa. The Resp. No. 6 is the Town & Country Planning Dept., Goa. The Respondent no. 7 is the Village Panchayat of Velsao-Pale-

Issorcim, and the Respondent no.8 is M/s. Kyle-San Holidays Pvt Ltd, the private company which put up the illegal construction ordered to be demolished by the judgement dt. 19.03.2014 of this Hon'ble Tribunal.

FACTS CONSTITUTING THE CAUSE

8. O.A. No. 21 (THC)/2013 (WZ) was filed by one Mr. Manual F. Rodrigues, resident of Velsao, to demolish the illegal construction of a hotel carried out by Respondent no.8 in Survey No. 54/3 of Village Panchayat of Velsao. Initially, the Original Applicant had approached the Hon'ble High Court of Bombay at Goa with this issue in the form of W.P. 98 of 2009, but in 2013, the matter was transferred for adjudication to this Hon'ble Tribunal in view of directions of the Hon'ble Apex Court.

9. After hearing of the Application, this Hon'ble Tribunal was pleased *vide* a judgement dt. 19.03.2014 [***Annexure 1***] to direct that the standing structure of Kyle-San Holidays Pvt Ltd [Resp. No. 8] be demolished / dismantled within the period of 3 weeks and to remove all the debris, filth from the site at his own cost. If this was not done by the R. 8 , the same was to be demolished by the Collector, South Goa (Resp. No. 4).

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10. The Applicant lists below the directions of this Hon'ble Tribunal in Paragraph 41, *inter alia*, which are of principal concern to the Applicant in this Execution Application which is filed in public interest:

(i) The 8th Respondent is directed to immediately demolish/dismantle standing structure of the K.H.R.C. within period of three (3) weeks hereafter and remove all the debris, filth etc. from the site at his own costs, if it is not so done, the same shall be demolished by the Collector South Goa, without any delay at the cost and risk of the 8th Respondent

and for recovery of such cost, the provisions of the land Revenue Code may be followed;

(ii) The 8th Respondent is further directed to restore the original position of the site in question after demolishing the structure of K.H.R.C. within period of two (2) weeks of such demolition;

(iii) That the Respondent No 8 is directed to pay costs of Rs. 20 lakhs as litigation costs to be deposited with the Goa Legal Services Authority to be used for needy litigants;

(iv) That the Respondent no. 8 is to further deposit an amount of Rs.10,00,000/- (Rs. Ten Lacs) with the Collector, South Goa for restoration of the environment in the proximity of the land in question by plantation of trees/beautification through Social Forestry Department.

(v) That Respondent no. 8 to deposit the above-mentioned amounts within the period of (4) weeks of the judgement dated 19.03.2014 or else the Collector, South Goa shall immediately take steps to attach the property of the 8th Respondent for the purpose of the recovery about which further directions may be sought from this tribunal.

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(vi) The Collector to report compliances of above directions within 4 weeks hereafter.

(vii) The Village Panchayat to pay Rs. 1 lakh as litigation costs with the Collector, South to be used for the betterment of the environment.

11. Pursuant to the judgement dt. 19.03.2014, the Respondent No. 8 filed an Appeal in the Supreme Court of India under Civil Appeal No. 4007 of 2014.

12. The Hon'ble Supreme Court dismissed the Appeal by its order dated 27.09.2022, and directed the Resp. No. 8 to comply with the directions contained in the judgement dated 19.03.2014 (including demolition of the structures) within a period of 8 weeks from the date of the order, i.e. 27.09.2022. However the Hon'ble Supreme Court waived the direction wherein costs of Rs. 20 lakhs were to be paid by the Resp No 8 to the Goa Legal Services Authority [*Order enclosed at Ann. 2 Colly*].

13. After the period of 8 weeks from the order of the Supreme Court had elapsed and there was no action of demolition of the structure by the Respondent No. 8, the Applicant wrote a letter dated 08.12.2022 to the Collector, South Goa, (Respondent no. 4), drawing to his attention that the orders passed by the NGT and subsequently upheld by the Supreme Court with respect to demolition of the structure had not been complied with. Hence, the Collector was required to carry out the directions and report compliance to the court. A copy of the Applicant's letter to the Collector is enclosed at **Annexure 3**.

14. Within a month, the Collector, South replied to the Applicant vide a letter dt. 23.12.2022, informing the Applicant that:

a. The Collector on 30.11.2022 had already asked the Deputy Collector & SDO, Mormugao, to submit a compliance report in the matter as to whether the impugned structures was demolished or not, and a report of the same was awaited, and;

b. That a fresh request dt. 23.12.2022 was made by the Collector to the Deputy Collector & SDO, Mormugao, to submit a detailed report within 24 hrs of the letter being received for further necessary action to be taken.

The letter of the Collector (South Goa) dt. 23.12.2022 is enclosed herewith as **Annexure 4**.

15. However, no further response was received by the Applicant thereafter. Worse still, the said structure has not been demolished by the Respondent no. 8 or by the Respondent no. 4 till date, and stands as a huge blemish in the coastal area of Village Velsao, violating the Coastal Regulation Zone Notification, in addition to the orders of the Hon'ble Supreme Court and the orders of the Hon'ble NGT.

16. Applicant is unaware as to whether the directions with regards to costs payable by the Resp No. 8 (project owner) are complied with. However it is reliably learnt that the Village Panchayat (Resp No. 7) has paid its dues as directed. Nonetheless, Applicant submits that the direction regarding demolition of the structure has not been carried out either by the Resp No. 8 or by the Collector South Goa (Resp No 4.).

17. Hence, the present Application is being filed for execution of the directions of this Tribunal in its judgement dt. 19.03.2014 to demolish/dismantle the Hotel Structure, which have been upheld by the order of the Hon'ble Supreme Court dt. 27.09.2022. The Applicant has brought the non-compliance of the Court's directions to the attention of the authorities but no action has resulted therefrom till date.

GROUNDS

18. It is under the following circumstances that the Applicant has approached this Hon'ble Tribunal in the instant Application, seeking execution of the judgement dt. 19.03.2014:

A. This Hon'ble Tribunal in its judgement dt. 19.03.2014 in O.A. No. 21 (THC)/2013 (WZ) was pleased *inter alia* to order for the demolition of the Hotel constructed in Survey No. 54/3 of Village Panchayat of Velsao, finding the same to be in violation of CRZ Regulation.

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B. With the exception of waiving certain costs imposed on the R. 8, The Hon'ble Supreme Court of India in its order dt. 27.09.2022 refused to interfere with the other directions of the judgement dt. 13.09.2014, and directed the R. 8 to comply with the same within 8 weeks. Consequently, the judgement dt. 13.09.2014 has attained finality, owing to its merger with the order of the Hon'ble S.C. dt. 27.09.2022.

C. The Respondent No 8 has not demolished the offending structures till date, in blatant violation of the directions issued by this Hon'ble Supreme Court and Hon'ble Tribunal.

D. The Collector (Resp. No 4), who was directed to carry out the demolition in the event that the R. 8 failed to do so, has also not complied with these directions.

E. The Applicant wrote a letter to the Collector, South on 08.12.2022 reminding the Authority of all of these facts, and calling upon the Collector to take steps to comply with the directions of the S.C. and the N.G.T.

F. Though the Collector has taken some steps on paper in calling for action taken reports on two occasions from the Dy. Collector, Mormugao, i.e. on 30.11.2022 and 23.12.2022, the fact of the matter is that there has been no action on the ground to remove the offending structure.

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G. Resultantly, more than a year after the expiry of the Hon'ble S.C. upholding the judgement dt. 19.03.2014 and directing for compliance therewith within 8 weeks from 27.09.2022, the offending structures have still not been demolished by the Resp. No. 8 and/or the Resp. No. 4. Hence the Applicant has been constrained to institute the present Execution proceedings in this Hon'ble Tribunal.

LIMITATION

19. There is no limitation period prescribed under the NGT Act for the purpose of seeking Execution under Section 25 of the Act. In any case, there has been no delay in the filing of this Application. After the dismissal of the S.C. Appeal against the judgement dt. 19.03.2014 on 27.09.2022, the Applicant expected the authorities to act within reasonable time. However, owing to inaction by the Authorities on demolishing the structure, despite reminders being sent, the Applicant has therefore filed this Application to ensure compliance with the directions passed in the said judgement dt. 19.03.2014.

PRAYERS:

20. The Applicant has therefore approached this Tribunal seeking the following reliefs:

a) For an order directing the Respondent No. 8 to immediately take steps to demolish the standing structures of Kyle-San Holidays Pvt. Ltd./ Kyle Holiday Resort Company (K.H.R.C.). and remove all the debris, filth, etc., at its own costs as directed by this Hon'ble Tribunal in paragraph 41(i) of the judgement dt. 19.03.2014, within a short time-bound period, and to report compliance to this Hon'ble Tribunal with copy to the Applicant;

b) In the event of the R. 8 failing to demolish the structures within the time bound period fixed by the Hon'ble N.G.T., for an order directing the Respondent No. 4 to immediately take steps to demolish the standing structures of Kyle-San Holidays Pvt. Ltd./ Kyle Holiday Resort Company (K.H.R.C.). and remove all the debris, filth etc. at the cost of the R. 8 as directed by this Hon'ble Tribunal in paragraph 41(i) of the judgement dt. 19.03.2014, within a short time-bound period, and to report compliance to this Hon'ble Tribunal with copy to the Applicant;

c) For a direction to the Resp No. 8 to immediately pay/deposit the costs of Rs. 10,00,000/- (Ten Lakhs) to the Collector, South Goa, as directed by this Hon'ble Tribunal in paragraph 41(iv) of the judgement dt. 19.03.2014;

d) For costs of this E.A;

e) For any other order deemed necessary by this Hon'ble Tribunal;

All for which the Applicant is most grateful.

THE GOA FOUNDATION Reg. No. 22[illegible]

PLACE: Mapusa, Goa

DATE: 27.10.2023

Applicant

S. Parsekar, Saraidez - Goa, Regd. No. 218/10, Expiry Date 29/01/2025, GOVT. OF GOA (INDIA)

Through,

27.10.2023

Adv. Leona Barreto,
MAH/2983/2018,
CF Alvarez House, Old Market,
Margao, Goa - 403601
Email - advleonabarreto@gmail.com,
Phone - 7507192037 .

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
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EXECUTION APPLICATION NO. _____ OF 2023 [WZ]

(UNDER SECTION 25 OF THE NGT ACT, 2010)

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The Goa Foundation ...Execution Applicant

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Vs

State of Goa and Ors. ...Respondents

AFFIDAVIT ON BEHALF OF THE APPLICANT

I, Dr. Claude Alvares, aged 75 years, Indian national, Secretaryof the Applicant organization abovenamed, do hereby solemnly state and affirm that:

1. I have today filed the instant Execution Application for the reliefs sought therein, which has been drafted on my instructions.

2. I solemnly declare and say that what has been stated in paras 1, 2, 3, 4(p), 5(p), 6(p), 7(p), 8(p), 9(p), 10(p), 11, 12(p), 13(p), 14, 15(p), 16(p), 17(p), 18(p), and 19(p) of the

accompanying application are in the nature of facts which are true to my own knowledge and official documents/ records, and that the contents of paras 4(p), 5(p), 6(p), 7(p), 8(p), 9(p), 10(p), 12(p), 13(p), 15(p), 16(p), 17(p), 18(p), 19(p) and 20 are my submissions made on legal advice which I believe to be true and correct. No part of it is false, and nothing material has been concealed therefrom.

3. I further state that the Annexures enclosed are true and correct copies of their respective originals, and have been attested by me as such.

Solemnly affirmed at Mapusa, Goa,
This the 27th day of October, 2023

DEPONENT

Solemnly affirmed before me by
Dr. Claude. Alvares
Who has been identified by
Who is known to me personally
Mapusa-Goa
Reg. No. 4161/2023 Date: 27/10/2023

JANARDHAN S. PARSHEKAR
NOTARY AT MAPUSA, BARDEZ-GOA
STATE OF GOA (INDIA)

...S. Parsheka...
...Bardez - Goa
No. 218/10
...iry Date
...01/2025
...A (INDIA)

VERIFICATION

Verified that the contents of paras 1 to 3 of my above affidavit are true to my knowledge and belief, and that no part of it is false and nothing material has been concealed therefrom.

Verified on the 27th day of October 2023,
at Mapusa, Goa

DEPONENT

NOTARIAL NOTARIAL NOTARIAL
NOTARIAL NOTARIAL NOTARIAL
NOTARY Janardhan S. Parsheka, Mapusa Bardez - Goa Regd. No. 218/10 Expiry Date 29/01/2025 GOVT. OF GOA (INDIA)

Solemnly affirmed before me by
Dr. Claude. Alvares
Who has been identified by
Who is known to me personally
Mapusa-Goa
Reg. No. 4161/2023 Date: 27/10/2023

JANARDHAN S. PARSHEKAR
NOTARY AT MAPUSA, BARDEZ-GOA
STATE OF GOA (INDIA)

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE BENCH), PUNE

EXECUTION APPLICATION NO. _____ OF 2023 [WZ]

(*UNDER SECTION 25 OF THE NGT ACT, 2010*)

IN

ORIGINAL APPLICATION NO. 21 (THC) OF 2013 [WZ]

IN THE MATTER OF:

The Goa Foundation …Execution Applicant

in

Manual F.Rodrigues …Applicant

Vs

State of Goa and Ors. …Respondents

Compilation – II

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Place: Mapusa, Goa

Date: 27.10.2023

27.10.2023

Advocate for the Applicant

ANNEXURE 1

BEFORE THE NATIONAL GREEN TRIBUNAL

(WESTERN ZONE) BENCH, PUNE

APPLICATION NO. 21(THC)/2013(WZ)

CORAM:

Hon'ble Shri Justice V.R. Kingaonkar
(Judicial Member)

Hon'ble Dr. Ajay A. Deshpande
(Expert Member)

B E T W E E N:

MR. Manual F. Rodrigues,
Premiero Ward, H.No.279,
P.O. Canssulim, Velsao,
Mormugao, Goa

.....**Applicant**

A N D

1 **The State of Goa,**
Through : Chief Secretary,
Secretariate, Porvorim,
Bardez, Goa

2 **The Goa Coastal Zone Management Authority**,
Through : Member Secretary,
Opp. Saligao Seminary,
P.O. Saligao,
Bardez, Goa – 403 511

3 **The Ministry of Environment & Forest**
Through : Its Director,
Paryavaran Bhavan,
CGO Complex, Lodhi Road,
New Delhi

4 **The Collector**,
South Goa District,
Its Office at Margao, Saleete,
Goa.

True Copy

5 **The Mamlatdar of Mormugao Taluka**
Mormugao, Vasco da-Gama,
Goa.

6 **The Town and Country Planning**
Through : Chief Town Planner,
Having its office at Panaji, Goa.

7 **The Village Panchyat of Velsao-Pule-Issorcim**,
Through : Its Sarpanch,
P.O. Cansaulim

8 **M/s. Kyle-san Holidays Pvt. Ltd.**,
Through : Its Director,
302, Mathias Plaza,
18th June Road, Panaji, Goa. **.....Respondents**

Counsel for Applicant
Mr. H.D. Naik,
Counsel for Respondent(s):

Ms. F.M. Mesquitta for Respondent No.1, 2, 4 & 6.
Mr. J.C. Pai, Sr. Adv. for Respondent No 8 with
Mr. J.E. Coelho Pereira, Sr. Advocate with
Mr. S. Karpe, Adv.

Date: 19th March, 2014

JUDGMENT

1. Originally, Petitioner Manuel F. Rodrigues had filed Writ Petition No.18 of 2009 in the High Court of Bombay at Panaji, Goa seeking invocation of Writ jurisdiction of the Hon'ble High Court for issuance of Writ of *Mandamus* directing Respondent No.1 to 7 to demolish illegal construction carried out by Respondent No.8 in land Survey No.54/3 of village Velsao in Marmugao Taluq. The other reliefs sought by him were of incidental nature. The writ petition has been transferred by Hon'ble High Court of Bombay, Bench at Goa vide order dated

17th October 2013. It appears that the Writ Petition has been transferred to this Tribunal mainly for the reason that contention of the petitioner *inter-alia* is that construction of the Hotel raised within Survey No.54/3 by 8th Respondent is in violation of CRZ Regulations and as such substantial dispute relates to breach of environmental norms.

2. Admittedly, 8th Respondent-M/s. Kyle-San Holidays Pvt. Ltd. is a company incorporated under the Companies Act 1956. For sake of convenience, it may be referred hereinafter as "Kyle Holiday Resort Company" (K.H.R.C.). 1st Respondent to 7th Respondent are Government Authorities. 3rd Respondent is the MoEF which controls the policy of Coastal Zone Management and Implementation thereof through 2nd Respondent. 7th Respondent is Village Panchyat of village Velsao which is semi-Government organization working under the relevant Village Panchyat Act. These seven authorities are directly or indirectly concerned with implementation of the Coastal Regulation Zone Notification issued under provisions of the Environment (Protection) Act 1986. They were made parties to the original petition for the reason that inspite of various complaints made to them, they had failed to take proper legal action against the illegal construction activities of 8th Respondent (K.H.R.C.).

3. Admittedly, K.H.R.C. applied for grant of Environment Clearance to the construction project of its Holiday Resort (Hotel). The proposal was recommended by 2nd Respondent i.e. GCZMA vide communication dated September 24th, 1994 and subsequently dated November 29th, 1996. So also, it was recommended by 6th Respondent vide

communication dated November 29th, 1996. 3rd Respondent (MoEF) granted the Environment Clearance (EC) dated April 20th 1998 to the project of K.H.R.C. on certain conditions. One of the conditions was that the provisions of the Coastal Zone Notification dated February 19th, 1991 and further amended Notification dated August 16th 1994 as well as July 9th, 1997 and provisions of the Water Act and the Air Act shall be complied with.

4. Case of the Applicant is that under the CRZ Notification dated February 19th, 1991 Zones were classified as CRZ-I, CRZ-II, CRZ-III and CRZ-IV in accordance with the distance from base line of the High Tide Line (HTL) and Low Tide Line (LTL). Said Notification declared the Coastal stretches of seas, bays, estuaries, creeks, rivers and backwater influenced by tidal action on landward side upto 500 mtrs. distance from High Tide Line (HTL). The HTL has been defined as the line upto which the highest tide reaches during the spring season. By virtue of said Notification, area of 200 mtrs. distance from HTL was declared as No Development Zone (NDZ). Obviously, no construction activity or any kind of development activity was permissible within the said area of the NDZ.

5. According to the Applicant, one of the conditions stipulated in the EC dated April 20th, 1998 granted in favour of 8th Respondent (K.H.R.C.) is Condition No.XIX which mandated that the construction shall conform to all the provisions of the Coastal Zone Management Plan of Goa. Another condition No.XXII is that no construction shall be carried out within 200 mtrs. towards the seaward side. The Applicant alleges that

although 7th Respondent i.e. Village Panchyat had issued construction permission dated July 2nd 1999 in favour of 8th Respondent (K.H.R.C.). Yet, no work was carried out in any manner and as such, validity period of the permission/licence elapsed by the end of June 2002.

6. The Applicant averred that although 8th Respondent (K.H.R.C.) submitted applications for renewal of the construction permission/licence on two occasions, however, those applications were rejected by 7th Respondent-Village Panchyat at both the times on September 16th, 2002 and October 31st, 2002. The 7th Respondent (Village Panchyat) took a stand that it had no legal authority to renew the construction licence. Still, however, after about two years of such rejection on second occasion, the Village Panchyat granted renewal to the construction licence in favour of 8th Respondent (K.H.R.C.) on August 17th, 2004. There was no iota of construction activity, even till the time of said renewal of construction licence issued in favour of 8th Respondent. The renewal was granted subject to certain conditions including the condition that the 8th Respondent shall obtain Health Cards for labourers engaged by the Contractor from the Health Officer, before commencement of the construction. The construction licence issued by 7th Respondent-Village Panchyat was challenged before the Additional Director of Panchyat, by one of the Panch Member on the ground that the resolution to renew the construction licence was improper and illegal. By an interim order, the Additional Director stayed operation of the resolution No.14 passed in the meeting of the Village Panchyat and called for Record and

Proceedings. This stay order was issued on October 18th, 2004. The Applicant alleges that as on that date, the construction activity has not been fully commissioned and was at the stage of beginning but came to stand still due to the stay order.

7. According to the Applicant, villagers of Velsao had challenged another project which was proposed in land Survey No.53/5 and was approved in the year 1997-98 treating HTL as per Naval Hydrographic Chart Dehradun. The letter communication of addressed by the villagers to the Hon'ble High Court of Bombay**,** Bench at Goa, was treated as P.I.L. and Writ Petition No.154 of 2000 was entertained by Hon'ble Divisional Bench which by order dated July 10th, 2000 gave directions to GCZMA, to consider the grievances of the villagers. Thereafter, the GCZMA gave directions to that project proponent that no construction shall be permitted in Survey no.53/5. It is alleged, therefore, that identical legal action should have been taken by the GCZMA against 8th Respondent (K.H.R.C.)

8. The case of the Applicant further is that though 2nd Respondent (GCZMA) issued show cause notice under provisions of section 5 of the Environment (Protection) Act 1986, to 8th Respondent (K.H.R.C.) when the unauthorized excavation was done and a foundation was being laid, yet, subsequently, by order dated July 24th 2006, Chief Secretary, Government of Goa directed 4th Respondent (Collector South Goa) to carry out joint inspection and also directed that during inspection 8th Respondent (K.H.R.C.) shall suspend the construction work until the issue is finally sorted out. The joint inspection was accordingly carried out on August 4th, 2006 in presence of a

local M.L.A., Member Secretary of GCZMA, Dy. Collector, Mamlatdar, Village Sarpanch, S.D.O. and representative of 8th Respondent. A joint inspection report was drawn thereafter which indicates that the construction of K.H.R.C. falls within the N.D.Z. The matter was discussed in the meeting of GCZMA in August 2006 and after deliberation in the said meeting a reference was made to the 3rd Respondent (MoEF). The Applicant further alleges that the 8th Respondent (K.H.R.C.) committed violation of the C.R.Z. Notification of 1991 and though the construction had not started prior to 2004, in any manner, what so ever, yet, GCZMA sought advice from National Coastal Management Zone Authority, MoEF by a letter Communication dated September 22nd, 2006 on making wrong representation that said construction of the hotel project vis-a-vis HTL demarcation as per Naval Hydrographic Chart may be taken into account and appropriate guidance may be given. Subsequently, the show cause notice issued to the 8th Respondent was decided to be dropped on the ground that the construction was initiated as per the approved plan and that it was "*on going*" project. By letter Communication dated April 23rd, 2008, the GCZMA informed the said decision to 8th Respondent and the 3rd Respondent also continued the Environment Clearance for the reason that it was treated as "*on going project*" and as such, the work was allowed to be continued.

9. The Applicant alleges that the 3rd Respondent (MoEF) failed to apply its mind to the material available on record. Though, the inspection report was available, yet, it was not

properly evaluated by the 3rd Respondent. The 3rd Respondent failed to see that the Members of the 2nd Respondent (GCZMA) vaguely stated that the impugned construction of the K.H.R.C. is outside 200 mtrs. of the HTL which was factually incorrect. Moreover, the project was not "*on going*" as such, because no work was done, till the site inspection was carried out by the Dy. Collector, representative of the 8th Respondent and others. The Applicant alleges that the authorities have bent and violated all the Rules with sinister design to help the 8th Respondent and protect the illegal construction of K.H.R.C. The Applicant, therefore, seeks demolition of the construction of the K.H.R.C. and further seeks direction to initiate appropriate inquiry against the authorities who rendered help to the 8th Respondent in such illegal activity. Hence, the Application.

10. By filing reply-Affidavit of Olga D'souza, Sarpanch of the Village Panchyat, 7th Respondent resisted the Application. According to the 7th Respondent, construction licence was issued to 8th Respondent (K.H.R.C.) on July 2nd, 1999 for the proposed construction to be carried out in Survey No.54/3 in accordance with the approvals which were granted by the 2nd, 3rd, and 6th Respondent to the said work. It is further stated that the renewal of licence was declined by communication dated September 27th, 2002 because of the lapses of the licence period. Still, however, it was subsequently renewed on August 17th, 2004 due to change in the circumstances. The 7th Respondent alleged that by Resolution dated August 14th, 2007, request for construction licence sought by 8th Respondent was rejected and therefore, the 8th Respondent had filed Appeal vide

Panchyat Petition No.23 of 2007 before the Director of Panchyats. By order dated May 26th, 2008 that Appeal was allowed and the 7th Respondent was directed to renew the construction licence. It is submitted by the 7th Respondent that when the Hon'ble High Court of Bombay, *suo-moto,* in Writ Petition No.02 of 2006 directed all the village Panchyats to take action against the structures which were identified to have come up within 'No Development Zone' as per the CRZ plan drawn by the Directorate of settlement and land records, the construction of 8th Respondent was identified to be falling under 'No Development Zone'. So, a show cause notice was issued to the 8th Respondent. Moreover, 2nd Respondent was requested to clarify whether the impugned construction was violating CRZ Notification of 1991. The clarification was communicated vide letter dated November 7th, 2008 by 2nd Respondent, informing that the construction undertaken by 8th Respondent could not be construed as violating the CRZ Notification, 1991 and hence it was for such a reason that the show cause notice was dropped and the subsequent construction renewal was allowed in favour of 8th Respondent.

11. By filing an elaborate reply Affidavit, Benedict Saldanha, Director of 8th Respondent resisted the Application on various grounds. Subsequently, Premnath Sawant, Civil Engineer, attached to 8th Respondent filed Affidavit in Sur-re-joinder. It is not necessary to set out each and every detail of the reply-Affidavit and the said Sur-re-joinder Affidavit. Substance of the pleadings putforth by the 8th Respondent (K.H.R.C.) may be stated in the following way :-

"The Applicant himself has constructed a house property in land Survey No.53/6 (Part) in violation of the CRZ Notification. The Applicant cannot ventilate cause of public interest when the Application is ill-motivated and filed with personal interest. The Application is filed with ill-intention to black-mail the 8th Respondent and is therefore, abuse of the legal process. A parcel of land Survey No.54/3 was purchased by 8th Respondent vide registered sale-deed dated January 31st 1996 from previous owner by name Mr. Mario Carvalho with a view to develop the same for tourism purpose. Before purchasing the property, at the stage of negotiations the 8th Respondent submitted an Application in the name of sister concern, namely M/s. Saldanha Developers Pvt. Ltd., to the then existing authority i.e. GSCCE (Goa State Coastal Committee for Environment) to demarcate the High Tide Line (HTL) as per survey plan shown along with a covering letter November 27th, 1995. It was based upon such identified High Tide Line that was demarcated as on February 26th, 1996, that construction plan for the project was submitted to the GSCCE (Goa State Coastal Committee for Environment) for approval. The GSCCE conducted inspection of the site on March 1st, 1996 and thereafter in the 11th Meeting held on March 15th, 1996 and March 24th, 1996 decided to refer the construction project to the Ministry of Environment and Forest (MoEF) for approval. In the meanwhile GSCCE decided that the HTL be demarcated as per Naval Hydrographic Office Chart, in keeping with the decision rendered by Hon'ble High Court of Bombay in Writ Petition No. 102 of 1996 and accordingly the Chief Town Planner, who was

the Member Secretary of the GSCCE called upon the 8th Respondent to submit revised plan for approval indicating the HTL as demarcated by the Naval Hydrographic Office Chart. Such revised Plans were drawn and submitted to the GSCCE on August 10th, 1996 curtailing the construction area, in view of the change in the High Tide Line position, as indicated under the Naval Hydrographic Office Chart. The revised plans were accordingly forwarded by the Member Secretary of GSCCE (Goa State Coastal Committee for Environment) to the MoEF on November 29th 1996. The MoEF called upon 8th Respondent to obtain NOC from the Goa Pollution Control Board in order to facilitate processing of the Application. After the NOC was produced, the MoEF approved the project on April 28th 1998 by imposing certain conditions. The Condition XV of the EC is that Naval Hydrographic Office Chart shall be adopted as Bench Mark for demarcation of the HTL in the area. On strength of the said EC, granted by the MoEF the construction licence was sought from the 7th Respondent which was duly issued after inspection. The Collector of South Goa also granted permission for conversation of the land to non-agricultural use by imposing fees of Rs.62,805/- vide order dated March 5th 1999. The construction work could not be commenced and subsequently the period of construction licence was over. The 7th Respondent declined to renew the licence and, therefore, an Appeal was filed before Director of Panchyats which was allowed on May 8th 2006. While other Respondents had done some work, again notice of the 2nd Respondent issued on July 2005 was received and he (8th Respondent) was called upon to show cause why the

work shall not be stopped. The joint inspection was carried out by the authorities on August 10th, 2006. The authorities including the GCZMA represented that the impugned construction was within 200 mtrs. which was demarcated by the National Institute of Oceanography (NIO), whereas representatives of 7th Respondent and 8th Respondent identified the High Tide Line as marked by the stones which were kept at the site and did not accept the HTL indicated by the Officers of the 4th Respondent. The construction was validly undertaken in accordance with the HTL identified by the Naval Hydrographic Office chart prevailing at time of approval of the project and when the construction activities began. The construction was "*on going project*" and therefore, it could not be treated as activity done in breach of the CRZ Notification of 1991 nor does it fall within NDZ area. Consequently, there is no violation of CRZ Notification due to the impugned construction. The 8th Respondent has incurred heavy expenditure for construction of the Holiday Resort which is likely to be adversely affected if the Application is allowed in terms of the prayers".

12. The 8th Respondent sought dismissal of the Application chiefly on the ground that the construction project was granted EC by the MoEF because the HTL was demarcated by the Naval Hydrographic Office Chart which was then accepted and approved bench-mark for the purpose. The subsequent change in the HTL would not materially affect the construction project because it was "*on going project*" and as such the same is legal and valid. The 8th Respondent, in support of such contention seek to rely on observations in case of "*Goan Real*

Estate and Construction Ltd. and another" wherein the Apex Court clarified the legal position. There were certain developments during pendency of the Writ Petition before the Hon'ble High Court of Bombay, Bench at Goa. We may give brief account of such developments, at this juncture, before we would set out what transpired during hearing of the Application in this Tribunal. By order dated February 11th, 2009 the 8th Respondent was restrained from carrying out further construction in any manner and was directed to maintain *status-quo* as on that day. By order dated June 30th, 2009 the Hon'ble Division Bench directed Registrar of the High Court of Bombay Bench at Goa to carry out inspection of the site and submit a report. The site inspection was carried out as per directions of the Hon'ble Bench. A report was submitted to the Hon'ble High Court Bench at Goa and is placed on record.

13. As stated before, by order dated October 17th, 2013, the Writ Petition No. 98 of 2009 came to be transferred to this Tribunal. Notices were issued to the parties. On the first date of appearance, none had appeared. Subsequently, on January 8th, 2014, learned Counsel for the Applicant appeared and informed that a separate Application seeking leave to withdraw the main Application has been filed on account of subsequent developments. That Application is treated as Misc. Application No.17/2014. The Counsel for 1st Respondent and other State Agencies sought time to file reply-Affidavits. Learned Counsel appearing for 8th Respondent stated that the construction was done in accordance with approved plan and there was no illegality committed by the 8th Respondent (K.H.R.C.). We

thought it fit, however, to hear the main Application on merits in view of the fact that substantial question pertaining to Environmental dispute is involved in the matter.

14. We heard learned Counsel for the parties. It need not be reiterated that the Applicant has no interest left in the matter and his counsel did not advance arguments on merits of the Application. However, learned Counsel Ms. F.M. Mesquita appearing for the first 6 Respondents except MoEF and learned Sr. Counsel Mr. Coelho Pareira appearing for 8th Respondent vehemently argued that the impugned construction does not violate the CRZ Notification of 1991. They seek to rely upon Affidavit of Dr. U. Sridharan, Additional Director of the MoEF. The Affidavit of Dr. U. Sridharan shows that the MoEF granted EC for construction of M/s. Saldanha Cove Beach Resort under CRZ Notification, 1991 on April 20th 1998 on basis of the maps prepared by Naval Hydrographer as per the Naval Hydrographic Chart which was the only recognized agency for demarcating the High Tide Line basis of (HTL) and on basis of the recommendations of Chief Town Planner, Government of Goa. The Affidavit further shows that the MoEF had authorized certain Agencies for demarcating the HTL in the month of December 1998, the Coastal Zone Management Authorities were constituted in 1998 and were delegated powers for the CRZ projects. The project seems to be within 200 mtrs. of the HTL due to the change in the shoreline at subsequent stage, but the EC cannot be withdrawn as the HTL demarcated by the National Institute of Oceanography was not stipulated for the projects that were cleared earlier to such demarcation.

15. Thus, Affidavit of Dr. U.Sridharan is to the effect that the project was given clearance on the strength of distance between the proposed construction and the High Tide Line (HTL) as per Naval Hydrographic Chart prepared by the Naval Hydrographer which was the only recognized prevailing agency for demarcating the HTL. His Affidavit further shows that there was subsequent change in the HTL demarcated by the NIO (National Institute of Oceanography) due to the change in the shoreline but it was not relevant for the purpose because the project which was already cleared on the basis of the HTL demarcated by the Naval Hydrographic Chart could not have been materially altered.

16. We deem it proper to frame following issues so as to effectually decide the controversy involved in the Application.

1) Whether the Construction of the 8th Respondent in respect of project of K.H.R.C. was proposed on the basis of distance between HTL as demarcated by the Naval Hydrographic Office Chart and the threshold of the proposed project site?

2) Whether the impugned construction had come up and or started when the construction licence was granted by the 7th Respondent when the site inspection was carried out on basis of complaint made to the 2nd Respondent in the month of July 2006 or atleast in the month of May 2006 when the Application for construction licence was favourably decided in favour of the 8th Respondent by order of

the Director of Panchyats in the proceeding of Appeal U/s. 178 of the Panchyat Raj Act ?

3) Was it legal and proper to infer that the construction was "*on going project*" and therefore, the EC granted previously could validate the same although actual construction work had not commenced after invalidation of the two clauses of CRZ Notification by virtue of Dictum in "Indian Council for Enviro-Legal Action" i.e. before April 18th, 1996 ?

4) Whether MoEF committed patent error while granting clearance to the proposal saying that the EC issued April 20th, 1998 would stand valid because the construction was "on going project" and hence the continuation of the work by the 8th Respondent could be permitted ?

17. Before we proceed to deal with the merits of the matter, it may be appreciated that the Applicant had filed various complaints against the construction work sought to be undertaken by the 8th Respondent. In *suo-motu* Writ Petition No. 02 of 2006 by order dated September 6th, 2007 Hon'ble Division Bench of the High Court of Bombay Bench at Goa directed as follows :

> **(1)** Each Panchyat/Municipality which has been served with a copy of the survey map prepared by the Directorate of Settlement and Land Records, shall identify from the survey maps given to it, those structures existing as on 19-2-1991 after excluding such structures in respect of which the CRZ Authorities had initiated the action but such action was discharged for any action whatsoever. This

may be done by reference to the existing survey plans prepared under the Land Revenue Code or on the basis of permissions/licence issued by the respective Panchyats/Municipalities. This exercise will be completed by each of the Panchyats/Municipalities by 31st January, 2008.

(2) In respect of other structures shown on the survey maps prepared by the Directorate of Settlement and Land Records i.e. those which are not identified as existing prior to 1991 as contemplated by Direction I herein above, the Panchyats/Municipalities shall issue notices to the owners and the occupants of those structures to show cause as to why the said structure should not be demolished as having been constructed in the NDZ area. Such notices shall be issued latest by 29-2-2008.

(3) On perusal of the reply and after giving opportunity to the owners and occupants of giving them a personal hearing, the Panchyats/Municipalities shall take a decision on the existence of the structure prior to 19-2-1991. This final decision shall be taken by the Panchyats/Municipalities within a period of ninety days from the date of which all the owners/occupants have been served.

(4) The structure in respect of Clause 3 will be demolished in case no stay has been obtained in any statutory appeal/appeals or any other legal remedy and this demolition will be completed within a period of sixty days from the date of the service of the final decision upon the owners and occupants.

(5) We are informed by the learned Advocate General that seven Panchyats and one Municipality has not been served with a copy of survey map as yet and that the same is likely to be served within a period of two weeks from today. In respect of the aforesaid seven Panchyats and one Municipality the schedule which is given for the issuance of notice in Clause 1 to 4 herein above as contemplated in Clause 2 will stand extended to 15-3-2008.

(6) If the Panchyats/Municipalities observe any structures in the NDZ area which are not shown in the survey map it will be liberty to include these structures in the steps described herein above.

(7) It is made clear that these directions only extended to areas which fall within CRZ III.

(8) The Panchyats/Municipalities are directed to regularly monitor the NDZ area to ensure that no additional structures in the 200 meters Zone will be permitted to be constructed as indicated in the survey maps. If any new construction is detected the Panchyats/Municipalities shall immediately take action against the same in accordance with law.

(9) It is further made clear that these directions will also not apply to structures which have been held to be validly constructed or repaired with permission of the CRZ Authorities and to structures in respect of which action has already been initiated by the CRZ Authorities/Panchayats/Municipalities before the date of passing of this order.

All Panchyats/Municipalities shall file affidavits in this Court on or before the 15-3-2008 indicating :-

(i) Total number of structures in the 200 meters zone as per DSLR survey maps;

(ii) Number of structures found to be existing as on 19-2-1991 on or before 30-3-2008.

(iii) Number of structures to whom notice has been issued as Direction above.**"**

18. We may take note of the fact that the 7th Respondent had then taken action against the impugned construction in view of the directions mentioned above. A show cause notice was served on the 8th Respondent. It was informed to the 8th Respondent that the work shall be stopped. Record shows that the Applicant had no reason to approach the Court when such *suo-moto W*rit Petition was entertained and abovementioned

directions were issued to the Authorities to tackle with the common problem of CRZ violations. Obviously, it is difficult to say that the Applicant approached the High Court or the Tribunal at belated stage. In any case, it cannot be said that the Applicant kept quite till the project was at the stage of completion and thereafter approached the Court with ulterior motive. It is the contention of the 8th Respondent that the Writ Petition/Application is filed with ulterior motive of black-mailing him. Had that been so, perhaps the Applicant would not have filed the Application for withdrawal of the same. It is not the contention of the 8th Respondent that he has succumbed to the illegal demands of the Applicant and has paid any amount of alleged "black money" to the Applicant. It is easy to make allegations of illegal gratification or demand for black money or attribute *ill-motives* to others but it is difficult to justify conduct of any one who himself now says that the Application for the withdrawal of petition/main Application should be allowed.

19. At this juncture, we may further clarify that by order dated February 11th, 2009, the Hon'ble Bench of the High Court restrained the 8th Respondent from carrying out further construction in any manner and directed maintenance of *status-quo***.** In the same order, it is categorically stated that the construction in question, as per the statement of learned Advocate General, is within 200 mtrs. as per the HTL demarcated through NIO (National Institute of Oceanography). In this background, further direction issued vide order dated June 30th, 2009 also may be taken into account. By that order of the High Court, the 8th Respondent was permitted to carry on

the construction subject to condition that no claim for equity on the basis of such construction will be putforth and that he shall be required to remove the impugned construction, if ultimately the petition would be decided against him. The Hon'ble Division Bench appointed Registrar of the High Court, Bench at Goa, to conduct site inspection with help of a technical person. Considering the tenor of such specific order passed by the Hon'ble Bench on June 30th, 2009, it goes without saying that the 8th Respondent was well aware that no claim for equity could be putforth, if, ultimately the impugned construction would be held as illegal. Not only that, the 8th Respondent was very well put on notice that he would be required to remove such construction in case the petition/Application is decided against him. In other words, the 8th Respondent was having full notice of the consequences which may follow if the impugned construction would be held as illegal. Obviously, the pleadings of the 8th Respondent regarding his huge investment of money, so called probability of loss that may be incurred by him due to adverse orders and the so called protection on basis of equity due to the EC granted by the MoEF is of no avail. We need to dislodge such pleas based on equitable principle in view of the orders of the Hon'ble High Court which we have referred to herein above.

20. Learned Sr. Counsel Mr. J.E. Coelho Pereira appearing for 8th Respondent and learned Counsel Ms. F.M. Mesquita appearing for the State Authorities, contended that the construction in question is protected due to the fact that the MoEF considered the same as "*on going project*" and therefore,

the same was allowed to be completed. The learned Sr. Counsel would submit that reliance of the Applicant on judgment of the Apex Court in "*Indian Council for Enviro-Legal Action Vrs. Union of India, 1996(4) S.C.C. 263*" is misplaced. He argued that the facts of the present case stands on different footing and therefore, the ratio of the judgment in "*Indian Council for Enviro-Legal Action*" is not applicable. He further argued that judgment of the Apex Court in Writ Petition (C) (2008) 8 S.C.C.645 in *Goan Real Estate and Construction Ltd. and another Vrs. People's Movement for Civil Action,* will govern the facts of the present case. He pointed out that the Apex Court in case of "*Indian Council for Enviro-Legal Action*" was pleased to consider amendment of the CRZ Notification of 1991 by virtue of CRZ Notification 1994 which curtailed the NDZ (No Development Zone) by relaxing the distance of 50 meters to 100 meters with reference to HTL in relation to rivers. It is pointed out that judgment in "*Indian Council for Enviro-Legal Action"* is held to have prospective application in view of the dictum in *"Goan Real Estate and Construction Ltd. and another"* (supra). Mr. Coelho Pareira, learned Sr. Counsel vehemently argued, therefore, that the construction of the K.H.R.C. was in accordance with the construction licence granted on basis of the HTL demarcated as per the Naval Hydrographer Office Chart which was prevalent at the relevant time and hence, the subsequent changes in the HTL shoreline will not materially affect the construction project which has been treated as "*on going activity*". He argued that the 8th Respondent could not be called upon to seek construction licence time and again by changing his stand in

keeping with the changes of the HTL demarcated by different authorities from time to time. He contended that the construction of the 8th Respondent (K.H.R.C.) deserves to be protected in view of the subsequent judgment of the Apex Court in *"Goan Real Estate and Construction Ltd. and another"* on which heavy reliance is placed by him.

21. Before considering the legal position and applicability of a particular yardstick to the facts of the present case, it would be useful to mention here that 'No Development Zone' (NDZ) is specifically defined by the CRZ Notification of 1991. The CRZ Notification is issued U/s. 3 sub-section (1) and Clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986. The purport of the CRZ Notification is to impose restrictions "on industries, operation and processes in the CRZ". The CRZ Notification aims to protect stretches of the land adjoining the HTL and prohibits certain activities including construction, trading, industries so on and so forth. The expression "No Development Zone" (NDZ) is clarified under the Notification as :-

> "*Area upto 200 meters upto HTL of landward side in case of seafront and 100 meter alongwith Tidal influence Water bodies or width of the creek which ever is less*".

Perusal of the said Notification goes to show that no construction shall be permitted within NDZ except for repairs or reconstruction of existing authorized structure within existing FSI.

22. Perusal of the Affidavit filed by Director of 8th Respondent and Affidavit with sur-re-joinder filed by Mr.

Premnath Savant go to show that at the inception, the HTL demarcated by the surveyor of India and later on as demarcated by Naval Hydrographic Office Chart was taken as base line for the purpose of approval of the construction plan. It is stated that on basis of such Naval Hydrographic Office Chart, the Goa State Coastal Committee for Environment (GSCCE) by letter No.27 of 1995 approved the plan for construction. The pioneer/vegetation line did not appear as demarcated one in that plan and HTL as indicated in the Naval Hydrographic Office Chart. It is asserted by the 8th Respondent that letter dated November 27, 1995 is indicative of the correct picture. Further, it is stated on Affidavit that the 8th Respondent is ready and willing to produce the original letter Communication in support of the contention that such HTL was demarcated by the Naval Hydrographer at the height point at which the water level reaches or wherefrom the permanent vegetation began.

23. From the pleadings of the parties, it is amply clear that the location of the HTL at the time of commencement of the construction activity, the period of actual commencement activity and the applicability of particular CRZ Notification are the important aspects which need consideration.

24. To clear the deck, before dealing with the legal submissions of Sr. Counsel Mr. Coelho Pereira, we may clarify the factual position that atleast until April 2000, there was absolutely not a single brick placed at the work site. By letter Communication dated October 12th, 2010 (P-55) Respondent No.2 GCZMA stated that the work had not started until April 2000. The MoEF vide Notification S.O. No.1122(e) dated

December 29th, 1998 gave authorization for the demarcation of the HTL, in respect of CRZ for the stretches of Coastal Beaches to the NIO (National Institute of Oceanography). The guidelines so published may be reproduced as follows :-

> *"Accordingly, the State Government has already allotted the task of demarcation of HTL/LTL in the CRZ of Goa to the NIO (National Institute of Oceanography) which is one of the institution for this purpose as stated"*

25. The GCZMA further mentions that the said demarcation work was to be completed as on date of the letter of Communication. The location of the site in question is border line in terms of NDZ as per the CRZ Notification. Relevant part from text order of GCZMA (P.55) dated October 12tyh, 2010, may be extracted as follows :

> *"Accordingly, the State Government has already allotted the task of demarcation of HTL/LTL in the CRZ of Goa to the NIO which is one of the institutions authorized for this purpose as stated. The GCZMA further mentions that the said demarcation work is yet to be completed. The location of the site in question is a border line in terms of NDZ as per the CRZ Notification and the site inspection has prima-facie established that atleast a part of construction may fall within 200 mts. as H.T.L. The GCZMA has taken a stand that the exact location of the construction in question vis-a-vis a H.T.L. can only be ascertained after completion of H.T.L. demarcation being undertaken through NIO. Therefore, GCZMA in its meeting held on 5th and 6th October was of the opinion, the Project Proponent as well as the*

Village Panchyat of Velsao should re-consider the issue of location of proposed construction in question vis-a-vis, the H.T.L. before allowing the commencement of the construction work in April 2000, almost 15 months after the issue of relevant Notification dated 29th December 1998. GCZMA further stayed the construction pending the demarcation of the actual HTL by the NIO."

(Emphasis supplied by us)

The Collector of South Goa has submitted a report of 10th August 2006 (page 66) whereby it is reported that site inspection was done in presence of Member Secretary, MCZMA and others. The report is reproduced as under :

"*The High Tide Line mark was identified in presence of all those who were present. It was seen that stones have been put up near the sea after beach and vegetation line as mark of High Tide Line. On verbal inquiry, it was informed that these stones is a mark of identification of High Tide Line and has been put up by N.I.O. in collaboration with the Director of Settlement and Land Records. I inquired the position with the Director of Settlement and Land Records who confirmed that the stones were put up by his Department after demarcation by NIO. The distance of "No Development Zone"of 200 mts. was measured from that point towards the construction site. It was seen that 200 mts. line comes up to road and hence entire construction of Saldhana developers is falling under "NDZ" of 200 mts. if measured from the H.T.L. mark fixed near vegetation line.*

Shri P. Sawant, representative of Saldhana Developers argued that his construction is as per approved plan available in the office. On inquiry, he stated that he is following the "NDZ" as per approved plan. Accordingly, a measurement was taken from last point of the construction, which is at a distance of 40 mts. away from the road. It was seen that from last point of construction till the present

position of sea, a distance of only 180 mts. was covered. Hence, if H.T.L. was to be determined considering, the view point that present development is following the H.T.L. the mark of H.T.L. line will go 20 mts. inside the sea which will be unrealistic in my opinion.

Sd/-
(J.B. SINGH)
Collector & District Magistrate,
South Goa, Margao"

26. It is significant to note that though the Condition No.(XV) of the General Conditions in the EC letter dated April 20th 1998 stipulate as follows :

"*The Project Proponent shall adopt the Hydrographer prepared by Naval Hydrographic Office Chart, Dehradun by HTL in the area under reference*".

Still, however, there is no iota of evidence to show that such condition was complied with by the 8th Respondent at any given point of time. The 8th Respondent has not produced any scintilla of authentic record to show that there was particular demarcation of HTL in the area by Naval Hydrographic Office, Dehradun wherefrom the distance of the proposed construction was measured prior to approval of the construction licence issued by the Village Panchyat. It is further important to note that 8th Respondent has failed to produce copy of the Naval Hydrographic Office Chart which allegedly prevailed at the relevant time, in the year 1998.

27. This takes us to sur-re-joinder Affidavit filed by Mr. Premnath Savant, who claims to be Civil Engineer attached to the 8th Respondent. He stated that a covering letter dated November 27th 1995 accompanied with the proposed construction plan furnished by 8th Respondent at indicated the

HTL on basis of which the GSCCE (Goa State Coastal Committee for Environment) considered the proposal. At the fag end of paragraph 10 of the Affidavit in sur-re-joinder, it is stated that the 8th Respondent had not *doctored* the said covering letter nor its sister concern had manipulated the same and therefore, genuineness of the said covering letter cannot be disputed. It is further stated :-

> "*We are ready and willing to produce the original of the said letter as and when this Hon'ble Court direct us to do so.*"

28. We fail to see as to why any specific direction was needed from the Court for production of said letter when genuineness of the said letter was disputed by the Applicant. Moreover, the construction plan was not submitted by the 8th Respondent at the relevant time but it was said to have been submitted by the so called sister concern. The fact that the 8th Respondent purchased the part of the land Survey No. 54/6 in January 1996 is a glaring fact. That was subsequently purchased and that construction licence was sought from the Village Panchyats at later point of time.

29. It is pertinent to note that on August 18th, 2006, joint inspection was carried out in presence of Local M.L.A., Dy. Collector, Mamlatdar of Margoa, Village Sarpanch, Representative of the 8th Respondent, by the 4th Respondent in pursuance to the order of the Hon'ble High Court, Bench at Goa. The joint inspection report dated August 10th, 2006, indicate that the distance was measured and the construction in question was found to be within 200 meters of the HTL towards

seaward. It was found that the impugned construction raised by the 8th Respondent falls within the NDZ if HTL mark as a NIO (National Institute of Oceanography) near vegetation line is considered as the Bench mark. Therefore, 8th Respondent was directed to refrain itself from carrying out any further construction.

30. What we find from the record is that the 8th Respondent utterly failed to establish that the construction was approved in accordance with the HTL which was prevalent in 1998 which is said to be the line demarcated by Naval Hydrographic Chart drawn by the Dehradun Authority. It cannot be assumed merely on basis of the Affidavit filed by the 8th Respondent that such line was demarcated for the area of Village Velsao. Secondly, it is manifest that subsequently, there was a direction of the Hon'ble High Court to demarcate the HTL on basis of the vegetation line available as Bench mark by way of stop gap arrangement till the NIO (National Institute Oceanography) could finally determine the same. The parameters were not complied with by the 8th Respondent. So also, it is amply clear that the construction work had not commenced at all prior to April 2000. By that time, already the Notification dated December 29th, 1998 had been issued and on basis thereof, the 2nd Respondent (GCZMA) had stayed all construction activities pending demarcation of HTL by NIO (National Institute of Oceanographic). It is obvious that the 8th Respondent could not have started the construction when it had not commenced at all in the month of April 2000, due to intervening CRZ Notification and the Communication of the

GCZMA which prohibited the construction activity pending demarcation of the actual NIO (National Institute of Oceanography). We cannot take cognizance of any work which was unauthorisedly done by the 8th Respondent.

31. We may further refer to the Communication of the GCZMA in this context :-

GCZMA has referred the matter to MoEF vide letter dated 22-9-2006 and the relevant part thereof is reproduced as below :

"*In compliance with the directions issued by the Hon'ble High Court of Bombay at Goa in it order dated 25th September 1996 pertaining to Writ Petition No.102 of 1996, the said approval was issued vis-à-vis the High Tide Line (HTL) demarcated on the basis of National Hydrographic Office (NHO) Charts. In the said Order, the Hon' ble High Court, had quashed the HTL demarcated physically along the Southern coastline of Goa by the State Government through the Survey of India and had consequently directed that, in the interim period until the HTL is resurveyed and demarcated uniformly, all over the country, the HTL shall be demarcated as per the NHO Charts. The MoEF (GOI) in its above cited Order has accordingly stipulated that the HTL is to be demarcated in accordance to the NHO Chart (copy of MoEF (GOI) clearance enclosed for ready reference). It has been noted that the HTL, marked by the erstwhile GSCCE on the basis of the NHO Charts is located on the seaward side of the HTL subsequently demarcated by the National Institute of Oceanography (NIO), in Goa. The difference range between 15 to 30 mts. depending on the beach profile of the coastal stretch in question*"

The letter further goes on describing the issue and also referred to the visits by MoEF to the project site. It further refers to the request for extension of time, made by the project

proponent to MoEF, for completion of the project in the year 2003.

"Ministry of the Environment and Forest, Government of India, vide letter dated 12th March 2008 has given the opinion that the said project is "*on going* " one and the clearance letter issued by the Ministry on 20th April 1998 stands valid".

This was basically on the submission made by the GCZMA vide letter dated 31st January 2008 that the Show Cause Notice addressed by the village Panchyat Valsao should be dropped in view of the fact that the proposed construction initiated was as per approved plan as confirmed by the site Inspection conducted by the Members of GCZMA. Though, it has been placed on the record that MoEF, GCZMA etc. had conducted several inspections of the site in question, no reference has been made in respect of their findings and observations while arriving at such decision/opinion :

32. There is no dispute about the fact that the NIO (National Institute of Oceanography) completed the work regarding demarcation of HTL somewhere in the year 2005. The sketch map drawn by Circle Inspector and Field Surveyor of the Mamlatdar as on November 6th, 2008 also showed existence of only plinth area of R.C.C. structure standing over 277 sq. meter. Thus, even in 2008 there was nothing at the site except structure of RCC Column standing on plinth area.

33. Report of the Court Commissioner (Registrar of the Hon'ble High Court, Bench at Goa) shows that part of the construction was found to have been undertaken by the 8th Respondent and that was then recently commenced. The said

report appears to be somewhat vague. However, the report dated July 22nd 2009 filed by the Registrar of the Hon'ble High Court goes to show that the construction work was hardly at the stage of fixing of grills and putting of certain walls. It was found that on second floor, there was no other construction except walls and the beams. No slab work was done. The internal work such as flooring/laying of tiles, installation of water tap, W.C. etc. was yet to be made.

34. Considering the entire record, we are of the opinion that 8th Respondent had not started the construction work before the year 2006 in as much as during joint inspection, the Collector of South Goa found that the proposed construction was within NDZ and there was no actual authorized construction raised at the site. The site inspection was carried out in view of order **(H-1)** dated July 24th 2006 passed by the Chief Secretary of the State of Goa on basis of complaints received from the local MLA and others and the order shows the nature of complaints. The relevant portion of the order may be again extracted as follows :-

> "*A complaint has been received from Chairperson of Committee against CRZ Violations in Valsao stating that M/s. Saldana Developers under name of Kylessal Holidays Pvt.Ltd. is constructing an illegal construction in violation of CRZ regulations within 200 mts of the No Development Zone. The complainants which include the MLA from Cortalim Mr. Mathany Saldana have stated that the construction coming up is within 200 mts. of the high tide line and that in a similar case in the property bearing no.54/5, the High Court had stopped further construction. Apparently the CRZ Authority has been earlier told that the project stands already approved. However the fact remains*

that at the ground level, construction must be cross checked to see whether it is actually within 200 mts of the HTL. If so, than we have to necessarily take up this issue again with the Ministry of Environment and see whether the earlier approval is valid. The total facts of the case may be taken up before the GCZMA meeting in order to take a considered view on the situation.

I therefore direct that the Collector (South) may arrange for demarcation of the HTL and the 200 mts line in the presence of the complainant, representative of the Developers as well as Dr. Varde. Due notice of the demarcation may be given so that all parties get the opportunity to submit their submissions before the Collector.

In the meantime, the Developers may be asked to suspend the construction till the issue is finally sorted out by the CRZ Authority."

35. Now, legal submission advanced by learned Sr. Counsel Mr. Coelho Pareira may be considered in the light of the aforesaid fact situation. By Judgment dated April 18th, 1996, the Apex Court in "*Indian Council for Enviro-Legal Action Vrs. Union of India, 1996(4) S.C.C. 281*" held that the amendment of CRZ Notification of 1991 by another Notification August 16th, 1994 which caused reduction of the CRZ area for prohibition of construction activity in the NDZ was illegal. The two amendments were held to be bad in law and as such were struck down. According to learned Sr. Counsel Mr. Coelho Pareira the present case is not governed by Dictum of the Apex Court in "*Indian Council for Enviro-Legal Action Vrs. Union of India,* referred to above but is covered by *Goan Real Estate and Construction Ltd. and another Vrs. Union of India, through Secretary, Ministry of Finance and Forest & others (W.P. (C) 329 of 2008)* decided on March 31st 2010 by the Apex Court. We

have carefully gone through the Judgment in "Goan Real Estate and Construction Ltd. & Another". The facts of the given case would make it explicit that the petitioners in that matter (Goan Real Estate and Construction Ltd. & Another) who had obtained construction permission in respect of a project beyond 100 meters, had submitted additional proposal to the Village Panchyat for construction of 18 blocks between 50 mtrs. and 100 mtrs., in view of the relaxation granted vide subsequent CRZ Notification of 1994. The Town and Country Planning Authority approved the construction vide order dated July 31st, 1995. The Village Panchyat sanctioned the plans and granted permission to construct. It was further found that (*Project Proponent* i.e. *Goan Real Estate and Construction Ltd. and another)* had carried out certain construction within 50 and 100 mtrs. of the stretches. This was noticed during site inspection dated September 25th, 1996. The foundation work was found but have been completed work upto plinth level and in some areas of the property was also completed, the construction work of the building was complete and ready for occupation. The facts stated at the fag end of the said Judgment go to show that the construction work done by M/s. *Goan Real Estate and Construction Ltd. and another* was practically completed prior to September 25th 1996 and therefore, there was substance in the contention that it was "a continuing project" of which the work had started, prior to pronouncement of the judgment in "*Indian Council for Enviro-Legal Action"* (Supra) and hence that project could be treated as "on going project" and may not be impacted by invalidity of CRZ Notification of 1994 as per judgment of the

Apex Court delivered on April 18th, 1996. What the Apex Court has decided in "*Goan Real Estate and Construction Ltd. and another* (supra) is that its judgment in "*Indian Council for Enviro-Legal Action"* will have prospective effect. So, the Dictum in "*Indian Council for Enviro-Legal Action" has* remained undisturbed but will hold the field prospectively. This precisely is the legal ratio which can be culled out from judgment of the Apex Court in *Goan Real Estate and Construction Ltd. and another Vrs. Union of India, through Secretary, Ministry of Finance and Forest & others (W.P. (C) 329 of 2008)* decided on March 31st 2010.

36. It need not be re-iterated that in the fact situation of present case atleast till April 2000 there was no construction activity at the site. The 8th Respondent later on proceeded with unauthorized construction after 2008 which was stalled by the competent authority. It appears that the MoEF erroneously gave opinion that the project was "*on going construction activity*" or that there was some mis-representation in this behalf.

37. Be that may as it is, when there was absolutely no construction activity initiated prior to April 18th, 1996 by the 8th Respondent at the site in question, he cannot claim benefit of the judgment in "*Goan Real Estate and Construction Ltd. and another*" (supra). As a matter of fact, perhaps, it was for such a reason that the Hon'ble High Court Bench pre-warned the 8th Respondent that if such construction activity could be undertaken by him, then it would be at his risk and without claiming any equity. Inspite of such clear understanding given by the Hon'ble Division Bench of the Bombay High Court at Goa,

the 8th Respondent proceeded with the construction and got it completed. Obviously, the 8th Respondent must face the legal consequences which may follow. The record of the present case reveals disturbing state of affairs in the Administration of the Regulatory functionaries. It appears that the Regulatory Authorities as well as MoEF practically joined hands with the 8th Respondent although the impugned construction was apparently violative of the CRZ Notification 1991, even though it had not been initiated before April 1996 and was granted renewal only on third occation by the Village Panchyat in 2004. There is not only an attempt to circumvent the legal provisions by the 8th Respondent but also hoodwinking done by others.

38. We may reproduce certain observations of the Hon'ble High Court of Judicature at Bombay in P.I.L. No.207/2010, (Corum : Dr. D.Y. Chandrachud and M.S. Sonak. JJ.) :

> *"The material which has been placed on the record leaves no manner of doubt that there is a complete breakdown of governance in the enforcement of urban planning legislation within the jurisdiction of PCMC. The PCMC is a planning authority within the meaning of Maharashtra Regional Town Planning Act, 1966 and is duty bound to enforce those provisions. As many as 66,324 structures are found to be unauthorized. Even after issuing notices of demolition, the PCMC has taken action only against 225 structures. The illegalities are compounded by a proposal for regularization. This is a virtual negation of the rule of law."*
>
> *x x x x x x x x x x x x x x x x x x x x*
>
> *"Since the violators of the law can be sanguine in that belief that their structures will not be demolished and in fact would be tolerated at a future date. We emphatically*

disapprove of the conduct and the decisions of the PCMC and hold the Commissioner of PCMC personally responsible for taking immediate steps and stringent action against unauthorized constructions including those which form the subject matter of the PIL before this Court."

39. Before we part with this matter, it would be appropriate to deal with Misc. Application No.17 of 2004 whereby Applicant sought withdrawal of the Application. The sole reason stated in the Application is that :

"In view of all the permissions/approvals are at place and considering the fact that all authorities have cleared project of the Respondent No.8, the Applicant do not wish to further pursue the matter and seeking leave of this Hon'ble Tribunal to withdraw the aforesaid Application without any condition."

We are of the opinion that the above reason is nothing but after thought and outcome of subsequent settlement which is extraneous to the substantial environmental dispute involved in the present matter. We are concerned with the environmental degradation caused due to violation of the CRZ Notification in blatant disregard to the object of the environmental protection norms. Consequently, we deem it proper to reject the request of the Applicant to withdraw the Application.

40. Taking a stock of the discussions and reasons stated hereinabove, we have no hesitation in holding that the 8th Respondent violated the CRZ Notification, 1991 and further CRZ Notifications applicable to regulate the Coastal Zone Management. We have no hesitation in holding that the impugned construction is intolerable breach of the CRZ

Notification. It causes damage to the environment and the Eco-system. In our opinion, situational response to case of illegal construction shall be of Zero tolerance. The impugned construction is, therefore, liable to be immediately dismantled/demolished and the land need to be restored to its original position. It is also necessary to impose exemplary costs on the 8th Respondent in as much as he proceeded with the illegal construction undauntedly, in total disregard to pre warning given by the Hon'ble High Court, taking a risk of the things which he was aware of to be rather a murky affair. We also deem it proper to call upon the 8th Respondent to pay restitution cost to the State of Goa which can be utilized for restitution of the environment. We further deem it proper to impose appropriate cost on the Village Panchyat, for illegally granting the construction licence,

41. In the result, the Application is allowed in following terms :-

i) The 8th Respondent is directed to immediately demolish/dismantle standing structure of the K.H.R.C. within period of three (3) weeks hereafter and remove all the debris, filth etc. from the site at his own costs, if it is not so done, the same shall be demolished by the Collector South Goa, without any delay at the cost and risk of the 8th Respondent and for recovery of such cost, the provisions of the land Revenue Code may be followed.

ii) The 8th Respondent is further directed to restore the original position of the site in question after demolishing of

the structure of K.H.R.C. within period of two (2) weeks of such demolition.

iii) The 8th Respondent is directed to pay costs of Rs.20,00,000/- (Rs. Twenty lacs) as litigation costs which shall be deposited with the Goa Legal Services Authority if is accepted on condition that the State Authority will permit legal aid to indigent litigants or the litigants appearing before this Tribunal who are in need of legal assistance, under the scheme by utilizing said amount and if such amount cannot be accepted by the Legal Service Authority, the same may be deposited for such probable use with the office of the Advocate General, Goa who may use his good Office to make the funds available for legal aid sought by the needy litigants or as directed by this Tribunal to the litigants, in regard to the litigation arising from territory of Goa State.

iv) We direct the 8th Respondent to further deposit amount of Rs.10,00,000/- (Rs. Ten lacs) with the Collector, South Goa for restoration of the environment in the proximity of the land in question by plantation of trees/beautification through Social Forestry Department.

v) We direct the 8th Respondent to deposit the above amounts within period of four (4) weeks hereafter or else the Collector, South Goa shall immediately take steps to attach the property of the 8th Respondent for the purpose of recovery about which further directions may be sought from this Tribunal.

vi) We direct that the Collector, South Goa to report compliances of the above directions within period of four (4) weeks hereafter.

vii) We further direct Village Panchyat, Velsao to pay amount of Rs.1,00,000/- (Rs. One lac) towards costs of litigation with the Collector, South Goa within four (4) weeks which may be utilized for the purpose of betterment of environment/plantation etc.

viii) We direct MoEF to take necessary steps for correction of internal lapses in order to avoid such lapses in future.

The Application is accordingly allowed and disposed of.

The Misc. Application No. 17 of 2014 stands rejected.

....., JM
(Justice V. R. Kingaonkar)

....., EM
(Dr. Ajay.A. Deshpande)

ANNEXURE 2 COLLY

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 479 OF 2009
IN
WRIT PETITION NO. 98 OF 2009

THE GOA FOUNDATION THROUGH ITS SECRETARY DR. CLAUDE ALVARES ... Applicant

Versus

STATE OF GOA THROUGH CHIEF SECRETARY AND 7 ORS., ... Respondents

Ms. Norma Alvares, Advocate for the Applicant.
Mr. A. N. S. Nadkarni, Senior Advocate with Mr. H. D. Naik for the Original Petitioner.
Mr. S. S. Kantak, Advocate General with Ms. S. Mordekar, Addl. Government Advocate for Respondent nos. 1, 2, 4, 5 and 6.
Mr. C. A. Ferreira, Asst. Solicitor General for Respondent no. 3.
Mr. Amit Palekar, Advocate for Respondent no.7.
Mr. Rafiq Dada, Senior Advocate with Mr. J. E. Coelho Pereira, Senior Advocate, Mr. S. Karpe and Ms. Misbah Dada, Advocates for Respondent no.8.

Coram:- B. P. DHARMADHIKARI &
U. D. SALVI, JJ.

Date:- 30th June, 2009

P.C.

The intervention application filed by this Misc. Civil Application is allowed. Petitioner to carry out necessary amendment and show the intervenor as party-intervenor in the body of Petition by 13.07.2009. The intervenor shall be heard at the time of final hearing.

2. Misc. Civil application is disposed accordingly.

B. P. DHARMADHIKARI, J.

U. D. SALVI, J.

arp/*

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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 98 OF 2009

MR. MANUEL F. RODRIGUES ... Petitioner
Versus
STATE OF GOA THROUGH CHIEF SECRETARY AND 7 ORS., ... Respondents

Mr. H. D. Naik, Advocate for the petitioner.
Ms. Sapna Mordekar, Additional Government Advocate holding for Mr. M. Salkar, Government Advocate for respondent nos. 1, 2, 4 to 6.
Mr. A. Palekar, Advocate for respondent no.7.
Mr. J. E. Coelho Pereira, Senior Advocate with Mr. S.Karpe, Advocate for respondent no.8.

Coram:- DR. D. Y. CHANDRACHUD & F. M. REIS, JJ.

Date:- 17th October, 2013

P.C.

The contention of the petitioner is that the construction of the 8th respondent is in violation of the CRZ notification. Having regard to the nature of the challenge, we deem it appropriate to direct that the petition shall stand transferred to the National Green Tribunal. The Registrar (Judicial) is requested to take necessary steps to implement this order.

DR. D. Y. CHANDRACHUD, J.

F. M. REIS, J.

at*

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I.A. filed in S.C. dt. 07.11.2014

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4007 OF 2014

IN THE MATTER OF:

M/S KYLE-SAN HOLIDAYS PVT LTD ... PETITIONER

VS

STATE OF GOA & ORS. ... RESPONDENTS

AND IN THE MATTER OF

Goa Foundation
Through its Secretary,
Dr Claude Alvares
C/o g-8 St Britto's Apts
Feira Alta,
Mapusa 403507 ... Applicant
GOA

APPLICATION FOR IMPLEADMENT

To
The Hon'ble Chief Justice of India
And his companion justices of
The Hon'ble Supreme Court of India

The Applicant most humbly sheweth:

1. This application for impleadment has been filed in the above Civil Appeal No. 4007 of 2014 as well as in the Special Leave Petition No. 11725 of 2014.

2. That the Applicant-Goa Foundation has taken up several matters before the Bombay High Court, Goa Bench relating to violation of CRZ Notification. It has also been

consistently fighting for protection of environment and this Hon'ble Court has also given several important judgments on the issues taken up by the Goa Foundation.

3. That one Manuel M. Rodrigues had filed a Writ Petition No. 98/2009 before the Bombay High Court at Goa seeking certain reliefs against M/s Kyle San Holidays Pvt. Ltd. alleging that it has violated the CRZ Notification. It was also stated in the Writ Petition that certain constructions were made by the Hotel – M/s Kyle San Holidays Pvt. Ltd., within 200 meters of the no development zone.

4. That in the said Writ Petition, the Applicant-Goa Foundation had filed MCA No. 479/2009 seeking to intervene in the matter. The High Court vide order dated 30.6.2009 allowed the said application and directed the petitioner in the Writ Petition to carryout necessary amendments in the writ petition. A true and correct copy of the Order dated 30.6.2009 by the High Court of Bombay at Goa is **Annexure A-1** (10)

5. That the Bombay High Court at Goa transferred the Writ Petition to the National Green Tribunal (Pune Bench) vide order dated 17.10.2013. The said order passed by the High Court has been challenged in the above SLP (C)

11725 of 2014, but Goa Foundation has not been made a party.

6. That before the National Green Tribunal, Manual F. Rodrigues – Writ Petitioner, moved Misc. Application No. 17/2014 seeking withdrawal of the Petition. The said Application has been dealt with by the NGT (Pune) Bench in Para 39 of its Judgment dated 19th March, 2014, which has been challenged in CA No. 4007 of 2014. Para 39 reads as follows:

> "Before we part with this matter, it would be appropriate to deal with Misc. Application No.17 of 2004 whereby Applicant sought withdrawal of the Application. The sole reason stated in the Application is that:
>
> > *In view of all the permissions/approvals are at place and considering the fact that all authorities have cleared project of the Respondent No.8, the Applicant do not wish to further pursue the matter and seeking leave of this Hon'ble Tribunal to withdraw the aforesaid Application without any condition."*
>
> We are of the opinion that the above reason is nothing but after thought and outcome of subsequent settlement which is extraneous to the substantial environment dispute involved in the present matter. We are concerned with the

environmental degradation caused due to violation of the CRZ Notification in blatant disregard to the object of the environmental protection norms. Consequently, we deem it proper to reject the request of the Applicant to withdraw the Application.

7. That it appears that Manual F. Rodrigues decided to withdraw the Petition, in an important issue concerning Public Interest. The NGT therefore, rightly rejected the application of Manual F Rodrigues but the fact remains that he decided not to participate in the adjudication. It is necessary to point out that the Applicant-Goa Foundation, though it was an intervener in the matter, was neither given an intimation of transfer of writ petition to the NGT nor was intimated about final hearing of the matter before the NGT. Therefore, Goa Foundation was not present before NGT at the time of final hearing.

8. That in view of the above facts, in particular, the reason that the original writ petitioner has decided not to contest the matter, it has become necessary for Goa Foundation to move this application for impleadment in the larger interest of the Environment and, in particular, to point out the violations of CRZ Notification committed by hotel M/s

Kyle – San Holidays Pvt Ltd. The Applicant-Goa Foundation submits that the judgement given by the NGT (Pune Bench) dated 19.3.2014 is correct and is required to be upheld in the interest of protection of environment.

9. That in this regard the Applicant-Goa Foundation submits that on the Petition filed by them (WP No. 102 of 1996), the Bombay High Court at Goa had given a judgment dated 3/4 July, 2000 in which the High Court had held that the HTL was demarcated by Survey of India 200 meters from the land ward side and that the said demarcation of HTL was accepted as far as Goa is concerned. The said judgment of the High Court was assailed before this Hon'ble Court and this Hon'ble Court vide order dated 17.2.2009 confirmed the judgment of the High Court accepting the affidavit of Dr. N.P.S. Varde, Director, Department of Science, Technology and Environment, Goa in which it was deposed that the High Tide Line (HTL) has been demarcated as per the CRZ Notification, 1991 as amended in 1994. A true and correct copy of the High Court judgment dated 3/4 July, 2000 and order dated 17.2.2009 by this Hon'ble Court are enclosed as **Annexures A-2 and 3** respectively. (11 to 36)

10. That in the present matter, the project of M/s Kyle-San Holidays Pvt. Ltd was approved on the basis of Naval Hydrographers Line, which was 40 meters closure to the Sea. However, the construction was not carried out till the year 2006. In terms of the judgment of the High Court dated 3/4 July, 2000 which was upheld by this Hon'ble Court the HTL has been demarcated on the basis of Survey General of India and it is that demarcation which is to be accepted.

11. That the NGT in its judgment dated 19.3.2014 has independently come to the conclusion that the construction made by M/s Kyle San Holidays Pvt. Ltd is in violation of CRZ Notification, 1991 and therefore, among other directions, has imposed cost on the said Hotel.

12. That in the above circumstances, this application for impleadment has been moved to defend the issue which has been raised in above matters and for protection of coastal ecology.

13. That the Applicant-Goa Foundation craves leave to file a detailed affidavit after the prayer sought for by the Applicant in this application is allowed by this Hon'ble Court.

PRAYER

The Applicant-Goa Foundation submits that in the facts and circumstances of the present case this Hon'ble Court may be pleased to:

(i) Allow the Applicant-Goa Foundation to be impleaded as a Respondent in the array of parties in the facts and circumstances mentioned above C.A. No. 4007 of 2014.

(ii) Pass such other order(s) as this Hon'ble Court deem fit and proper in the facts and circumstance of the present case.

FILED BY:

[ANITHA SHENOY]
ADVOCATE FOR THE APPLICANT-
GOA FOUNDATION

Dt. 7.11.2014.

NOTARY GOVT. OF GOA (INDIA)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4007 OF 2014

IN THE MATTER OF:

M/S KYLE-SAN HOLIDAYS PVT LTD ... PETITIONER

VS

STATE OF GOA & ORS. ... RESPONDENTS

AND IN THE MATTER OF

GOA FOUNDATION .... APPLICANT

AFFIDAVIT

I, Dr. Claude Alvares, son of Mr. Peter Alvares, aged about 66 years, C/o G-8, St. Britto's Apts, Feira Alta, Mapusa, Goa do hereby solemnly affirm and state as follows: -

1. That I am the Secretary of Applicant-Goa Foundation. I am aware of the facts of the case as such competent to swear this Affidavit.
2. That the facts stated in the Application for Impleadment at pages 1 to 7 are true and correct to my knowledge and belief.
3. That the Annexures are true and correct copy of their respective originals.

DEPONENT

SOLEMNLY AFFIRMED AND VERIFIED
BEFORE ME BY Dr. Claude Alvares
WHO IS IDENTIFIED BEFORE ME BY
8
WHOM I PERSONALLY KNOW
REG. No. 1482/14 DATED 25/10/14

JANARDHAN S. PAI [illegible]
NOTARY AT MAPUSA GARLI / GOA
STATE OF GOA INDIA

VERIFICATION

Verified that the contents of paras 1 to 3 of the above affidavit are true and correct to my knowledge and belief and nothing has been concealed therefrom.

Verified on 25th day of October, 2014 at Goa.

DEPONENT

NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL

SOLEMNLY AFFIRMED AND VERIFIED
BEFORE ME BY Dr. Claude Alvares
WHO IS IDENTIFIED BEFORE ME BY
WHOM I PERSONALLY KNOW
REG. No. 1482/14 DATED 25/10/14

JANARDHAN S. PARSEKAR
NOTARY AT KAPUSA BARDEZ GOA
STATE OF GOA INDIA

ITEM NO.10 COURT NO.6 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

I.A. 3/2014 in Civil Appeal No(s). 4007/2014

M/S.KYLE-SAN HOLIDAYS PVT.LTD. Appellant(s)

VERSUS

STATE OF GOA & ORS. Respondent(s)

(Application for impleadment and office report)

Date : 09/02/2015 This application was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE
[IN CHAMBERS]

For Appellant(s) Ms. Binu Tamta,Adv. (Not Present)

For Respondent(s) Ms. Anitha Shenoy,Adv. (Not Present)

The Court made the following
O R D E R

None present for the parties.

Application for impleadment be listed along with the main matter.

(NARENDRA PRASAD)
COURT MASTER

(SHARDA KAPOOR)
COURT MASTER

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SECTION XVII MATTER FOR : 28.7.2017
COURT NO. : 5
ITEM NO. : 13

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4007 OF 2014
WITH
INTERLOCUTORY APPLICATION NO. 3 & 45342
(Application for impleadment & direction)

M/s Kyle-San Holidays Pvt. Ltd. ...APPELLANT
Versus
The State of Goa & Ors. ...RESPONDENTS

OFFICE REPORT

The matter above mentioned by Special Leave was listed before the Hon'ble Court on 21.04.2014, when the Court was pleased to pass the following order:

"Issue notice returnable in a month.
In the meanwhile, there shall be status quo with regard to the Construction made by the appellant."

It is submitted that there are eight respondents in the matter. Respondent Nos. 1 to 2 and 4 to 8 are served through A.D. cards and respondent No. 3 is served through Central Agency vide Registrar's order dated 12/11/2014 but no one has entered appearance so far.

Service of notice is complete.

It is further submitted that Ms. Binu Tamta, Advocate has on 21.01.2015 filed additional affidavit on behalf of appellant. (Copy of the same is already included in the paper books.)

It is further submitted that Ms. Anitha Shenoy, Advocate has on 07/11/2014 filed an application for impleadment to implead 'Goa Foundation' as party respondent in the matter. The application is registered as I.A. No. 3 and placed before the Hon'ble Judge in Chamber on 09.02.2015, when His Lordship was pleased to pass the following order :

"None present for the parties.
Application for impleadment be listed alongwith the main matter."

It is also submitted that Counsel for the appellant has on 31.05.2017 filed application for direction which is registered as I.A. No. 45342/2017 and the same is circulated herewith.

And upon being mentioned, Hon'ble Court on 20.07.2017 was pleased to pass the following order :

"On being mentioned, the matter is taken on Board.
List the matter on 28.7.2017 before the appropriate Bench.

The matter above-mentioned is listed before he Hon'ble Court with above report.

DATED THIS THE 25TH DAY OF JULY, 2017.

ASSISTANT REGISTRAR

Copy to : Ms. Binu Tamta, Advocate
Ms. Anitha Shenoy, Advocate

ASSISTANT REGISTRAR

True Copy

ITEM NO.14 COURT NO.4 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 4007/2014

M/S.KYLE-SAN HOLIDAYS PVT.LTD. Appellant(s)

VERSUS

THE STATE OF GOA & ORS. Respondent(s)
WITH
SLP(C) No. 11725/2014 (IX)

Date : 05-12-2017 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE DEEPAK GUPTA

For Appellant(s) Mr. Mukul Rohatgi, Attorney General
Ms. Binu Tamta, AOR
Mr. Dhruv Tamta, Adv.
Mr. Somnath B. Karpe, Adv.

For Respondent(s) Mr. Sanjay Parikh, Adv.
Goa foundation Ms. Anitha Shenoy, AOR

UPON hearing the counsel the Court made the following

O R D E R

We would like the presence of the Ministry of Environment, Forests and Climate Change, National Institute of Oceanography and Goa Coastal Zone Management Authority.

Issue notice.

Mr. S. Wasim Qadri, learned counsel accepts notice on behalf of the Ministry of Environment, Forests and Climate Change.

Notice may now be issued to National Institute of Oceanography and Goa Coastal Zone Management Authority.

Amended memo of parties be filed within a week.

List the matters on 17.01.2018.

Signature Not Verified
Digitally signed by MEENAKSHI KOHLI
Date: 2017.12.05 17:51:28 IST
Reason:

(MEENAKSHI KOHLI)
COURT MASTER

(KAILASH CHANDER)
COURT MASTER

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4007 OF 2014

M/S.KYLE-SAN HOLIDAYS PVT.LTD. ...Appellant(s)

Vs.

THE STATE OF GOA & ORS. ...Respondent(s)

WITH

S.L.P.(CIVIL) NO. 11725 OF 2014

O R D E R

CIVIL APPEAL NO.4007 OF 2014

We heard the learned counsel for the parties and perused the material placed on record. We do not find any merit in this appeal. It is accordingly dismissed.

However, having regard to the facts and circumstances of the case, costs of Rs.20,00,000/- (Rupees twenty lakhs) imposed upon the appellant herein as litigation costs to be deposited with the Goa Legal Services Authority is waived. The appellant is directed to comply with the directions contained in the impugned order except payment of costs of Rs.20,00,000/- (Rupees twenty lakhs) within a period of eight weeks from today.

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S.L.P.(CIVIL) NO. 11725 OF 2014

In view of the above, this Special Leave Petition does not survive for consideration. It is accordingly dismissed.

.....J.
[S.ABDUL NAZEER]

.....J.
[V.RAMASUBRAMANIAN]

New Delhi;
September 27, 2022.

ITEM NO.2 COURT NO.4 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 4007/2014

M/S.KYLE-SAN HOLIDAYS PVT.LTD. Appellant(s)

VERSUS

THE STATE OF GOA & ORS. Respondent(s)

(IA No. 45342/2017 - CLARIFICATION/DIRECTION
IA No. 1/2014 - EX-PARTE STAY
IA No. 2/2014 - PERMISSION TO FILE ANNEXURES)

WITH SLP(C) No. 11725/2014
(IA No. 45344/2017 - CLARIFICATION/DIRECTION)

Date : 27-09-2022 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE S. ABDUL NAZEER
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Appellant(s) **Ms. Binu Tamta, AOR**
Mr. Dhruv Tamta,Adv.

For Respondent(s) **Mr. Sanjay Parikh,Sr.Adv.**
Ms. Srishti Agnihotri, AOR
Mr. Satwik Parikh,Adv.
Mr. Anshu Saraswat,Adv.
Ms. Mantika Vohra,Adv.

Ms. Aishwarya Bhati,ASG
Mr. S.Wasim A.Quadri,Sr.Adv.
Ms. Archana Pathak Dave,Adv.
Ms. Suhashini Sen,Adv.
Mr. Siddhant Kohli,Adv.
Mr. Rustam S.Chauhan,Adv.
Mr. Gurmeet Singh Makker, AOR

Mr. Vijay Pratap Singh,Adv.
Mr. Jayesh K. Unnikrishnan, AOR
Ms. Akanksha Goyal,Adv.

Mr. Abhay Anil Anturkar,Adv.
Mr. Bhavya Pande,Adv.
Mr. Dhruv Tank,Adv.
For Dr. R.R.Deshpande & Associates, AOR

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M/S. K J John And Co, AOR

UPON hearing the counsel the Court made the following

O R D E R

The Civil Appeal and the Special Leave Petition are dismissed in terms of the signed order.

Pending applications also stand disposed of.

(ANITA MALHOTRA)
AR-CUM-PS

(KAMLESH RAWAT)
COURT MASTER

(Signed order is placed on the file.)

ANNEXURE 3

GOA FOUNDATION

G-8, St Britto's Apartments, Feira Alta, Mapusa 403507 Goa, INDIA
Telephone: +91-9067176274
E-mail: goafoundation@gmail.com *Website:* www.goafoundation.org

Dated: 08.12.2022

To:

The Collector,
South Goa District,
Margao, Goa.

Subj: Execution of order dated 19.3.2014 of Hon'ble National Green Tribunal in respect of construction erected by Kyle-san Holdings Pvt Ltd., on Sy.No.54/3 of Velsao – and Supreme Court's order dated 27.9.2022.

Dear Sir,

The Hon'ble NGT by its judgment dated 19.3.2014 allowed an application No.21(THC)/2013(WZ) filed by Manuel F. Rodrigues, resident of Velsao, alleging violation of the CRZ notification 1991 in respect of illegal construction of hotel project by Kyle-san Holdings on Sy.No.54/3 of Velsao village, Mormugao Taluka.

The Hon'ble Tribunal also issued the following directions in respect of the impugned construction (see copy of order attached for full set of directions):

i) The Respondent No.8 [Kyle-san Holdings Pvt Ptd] is directed to immediately demolish/dismantle standing structure of the K.H.R.C. within period of three (3) weeks hereafter and remove all the debris, filth etc., from the site at his own costs. If it is not so done, the same shall be demolished by the Collector South Goa, without any delay at the cost and risk of the 8th Respondent and for recovery of such cost, the provisions of the Land Revenue Code may be followed.

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ii) The 8th Respondent is further directed to restore the original position of the site in question after demolishing of the structure of K.H.R.C. within period of two (2) weeks of such demolition.

iii) Rs.10 lakhs to be deposited by the Resp.No.8 with the Collector for restoration of the environment.

The NGT judgment was appealed in 2014 by Kyle-san Holdings in the Supreme Court of India, which granted stay on the execution of the said judgment pending consideration of the civil appeal (No.4007/2014).

The Supreme Court of India thereafter in 2022 heard and dismissed the appeal and directed that the NGT's directions, with the exception provided in the dismissal order, be implemented within a period of eight weeks of the date of the order (27.9.2022).

I am writing to you to bring on record the order of the NGT dated 19.3.2014 which has merged with the order of the Supreme Court dismissing the appeal dated 27.9.2022. You are called upon to carry out the said directions of the Hon'ble NGT and report compliance to the Supreme Court of India in the matter, as directed.

Yours faithfully,

Dr Claude Alvares
Director

Enclosed:

1) NGT Order dated 19.3.2014
2) SC Order dated 27.9.2022

MOST URGENT/
SUPREME COURT MATTER
REMINDER

ANNEXURE 4

OFFICE OF THE COLLECTOR SOUTH GOA DISTRICT
3rd floor, Matanhy Saldanha Administrative Complex, Margao – Goa.
Revenue Branch Collectorate
Phone No:0832-2794383, 2794384 Email: dyerev-south.goa@nic.in

No. 41/REV/Supreme Court/C.A.No.4007/14/2022/409 Dated:23/12/2022.

To,
The Deputy Collector & SDO,
Mormugao Taluka

Sub: Execution of order dated 19.3.2014 of Hon'ble National Green Tribunal in respect of construction erected by Kyle-San Holding Pvt Ltd. on Sy.No.54/3 of Velsao and Superme Court's order dated 27.9.2022.

Sir,

Find enclosed herewith the copy of letter dated 08/12/2022 received from Dr. Claude Alvares, Director of Goa Foundation, r/o residence of G-8, St Britto's Apartment, Feira Alta, Mapusa Goa regarding execution of order dated 19.03.2014 of Hon'ble National Green Tribunal in respect of construction erected by Kyle-San Holding Pvt. Ltd. on Sy.No.54/3 of Velsao- Mormugao Goa and Superme Court's order dated 27.09.2022.

In view of above, this is to inform you that this office vide letter no.41/REV/Superme-court/C.A.No.4007/14/2022/263 dated 30/11/2022, had requested your office to submit the compliance report in the above matter to this office on or before 25/11/2022, whether appellant has demolished the impugned structure in terms of order dated 19/03/2022 issued by the Hon'ble National Green Tribunal (*WZ*) Pune or not. However till date the report of the same is still awaied.

In view of above, you are once again requested to expedite the case and submit a detailed report in the matter to this office, within 24 hrs from the receipt of this letter without fail for further necessary action.

Yours faithfully,

(Snehal S. Prabhu)
Dy. Colletcor (Rev)
South Goa District Margao Goa

Encl: **As above.**
Copy to:

Shri. Claude Alvares, Director Goa Foundation, r/o G-8, St Britto's Apartments, Feira Alta, Mapusa -Goa.

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